

Memo



To: Beverly Gambino, Town of Sardinia Supervisor
From: T. P. Malecki
Date: January 28, 2014
Re: 1099's for 2013 Rebates

Background: The Town distributed cash distributions related to its "Tax Relief Under Sardinia Taxes" program. The Town's 2013 cash distributions to taxpayers within Town limits have, in the opinion of the Town's legal counsel, been classified as a "voluntary refund" and such payments which were made in settlement of moral obligations and equitable claims were also based on a corresponding benefit to the Town as a whole. It was not gift to any individual or private corporation or association which, in fact, is a violation of Article VIII of the Constitution of the State of New York.

The amounts distributed were not a refund of school taxes since the school district did not refund the taxes paid to it nor were they a refund of Town tax since there is no Town tax. The Town based the distribution on school taxes paid solely to establish which landowners within Town limits pay taxes to local governments. Therefore, the payment of school taxes and the Town's cash distribution are two separate and distinct transactions.

Conclusion: Initially, it was thought that it may be in the best interest of the Town to issue 1099's. See memo dated November 1, 2013. However, several Town residents have notified the Town that their tax accountants do not agree with the conclusion. TPM upon further research provides the following comments:

Section 1.6041-1 (a)(1)(i) of the Internal Revenue Code cites "every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income." The rebate amount was not fixed or determinable as defined in Section 1.6041-1 (c) ;whereby, "income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained." Since the payees did not know the rebate was to occur, it was not predetermined nor could the payee previously ascertain the amount to be paid, an information return (Form 1099) is not necessary.