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IRS Form 1099 Wars

I recently wrote about IRS Forms 1099, those flimsy pieces of paper you receive reporting income. See [I'm Sending An IRS 1099: 1099 Are You Outta Your Mind?](#) and [The Truth About IRS Forms 1099](#). No one likes receiving them, but there's a surprising amount to know about these forms. Most of them arrive in January. Yet you might be surprised to learn that you can get them all year long—some companies issue the forms when they issue checks. **Whenever** they come, don't ignore them.

You also may not know how important these “information returns” are to the tax system. Information reporting has become the centerpiece of IRS enforcement efforts. Each form includes your Social Security number, so if you don't put it on your tax return, bells go off. And more of these forms are on the way as a result of the [Small Business Jobs Act of 2010](#). See [Big Tax Changes In Small Business Tax Law](#). For payments after December 31, 2010, the new law requires recipients of rental real estate income to issue 1099s to all service providers getting \$600 or more for rental property expenses.

Suppose you receive a Form 1099 you know to be wrong? Say you're paid a consulting fee of \$30,000 in 2009, but the 1099 you receive in January 2010 is for \$300,000. What should you do?

First, act promptly. You may be able to approach the issuer, show you **really** only were paid \$30,000, and get the issuer to reissue it correctly. Ideally, do this **before** the issuer sends the 1099 to the IRS. (A 1099

consists of several parts: for the recipient, the IRS, and the state.) Forms 1099 should be sent to taxpayers by January 31 and to the IRS by February 28. So if you call and write the issuer of the 1099 as soon as you receive it (I do both), you may be in time. The issuer may be able to simply destroy the incorrect one and issue a new one.

If you follow this path, keep a written record, such as a letter from the company saying that they originally issued a 1099 for \$300,000, destroyed it, and then properly issued one for \$30,000. Why keep this? Because you may find that the company *did* transmit the incorrect Form 1099 to the IRS after all. This way you'll be able to explain it.

If the issuer of the 1099 has already sent it to the IRS when you first contact them to report the error, you should ask for a "corrected" Form 1099. The issuer will prepare a 1099 in the *correct* amount and check a "corrected" box on the form. That tips off the IRS not to simply add up the figures on the two Forms 1099.

What happens if the issuer won't cooperate when you contact them? There's no good answer. You'll want to address this on your return. For example, you could show the \$300,000 payment on your return (on line 21, or on a Schedule C), and then explain the \$270,000 overstatement. You might do this in a statement or footnote, as by showing \$30,000 on line 21, but adding "see statement." The statement might say:

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$300,000 Form 1099-MISC from _____ [payor]
- $270,000 (1099 for $30,000 payment was erroneously issued for $300,000)
$ 30,000 Net to line 21
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Does this kind of thing make your audit risk higher? See [Ten Ways To Audit Proof Your Tax Return](#). It may, and that's an argument for doing all you can to make sure the Form 1099 is correct in the first place. But you probably don't have much choice about this. After all, you practically *guarantee* yourself an audit if you merely report \$30,000 figure and don't explain. In that event, the IRS will likely send you a notice asking for tax on the \$270,000.

Is there any other possibility? Well, if you are really miffed you could perhaps sue the payor for issuing this clearly erroneous form. But most

lawsuits of this sort go nowhere and are expensive. And forget trying to bring the IRS into your dispute—they won't be helpful. Besides, you won't have the suit concluded before the deadline for filing your tax return.

The difficulties faced by taxpayers who receive erroneous Forms 1099 are one reason to be as specific as possible in written agreements, so the amount and number of Forms 1099 is explicit. For example, in settling litigation, I like to have a settlement agreement that is very specific about each Form 1099 that will be sent. For more tips about tax issues in settling litigation, see [10 Things To Know About Taxes On Damages](#).

For more about Forms 1099, see [Ten Things You Should Know About 1099s](#).

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