



## Robert W. Wood

THE TAX LAWYER

TAXES 11/22/21

### **If You Don't Get Form 1099, Is It Taxable, Will IRS Know? (Hint: 'If A Tree Falls In The Forest...')**

As the holidays draw near, what do you think about, sugarplums, hot toddies, Eggnog? A visit to the tree lot, gifts, visits from relatives? Nope, you start fretting about those little IRS Forms 1099. These critical tax forms arrive in late January or early February and report how much you were paid in the prior calendar year. Don't ignore them, as each one includes your Social Security number, and will be matched against your tax return by IRS computers. What if you earned income but the person who paid you forgets to issue you a form? It reminds me of that old puzzler, "If a tree falls in a forest and no one is around to hear it, does it make a sound?" Put differently, if you don't get a Form 1099, is it income in the first place? And to ask the touchier question, can you argue that since there was no form, it must not be taxable? How will the IRS know? These questions come up more than you might think, and it might be tempting to play dumb. But that's not wise, even if you don't receive a form. Of course, Forms 1099 can have errors, so check each one carefully.

If you were paid \$10,000 but the Form 1099 says \$100,000, contact the issuer. If you can't get them to fix it, you'll need to disclose and explain the \$100,000 on your tax return. IRS Forms 1099 remind you that you earned interest, received a consulting fee, or were paid some other kind of income. They notify the IRS too. But say you earned \$50,000 from someone but they forgot to send you the form? Can you ignore it, the tree falling in the forest that no one hears? Not really. The IRS say that income is income, whether you receive a Form 1099 or not. In fact, all sorts of payments are taxable, even though there is no requirement for a Form 1099 to be issued.



If you receive a Form 1099 and don't include the reported item on your tax return, you can expect an IRS notice or bill. Each Form 1099 is matched to your [Social Security number](#), so the IRS can easily churn out a tax bill if you fail to report one. In fact, you're almost guaranteed an IRS tax notice if you fail to report a Form 1099. What if you've moved and the form never catches up with you? Even if it is sent to your *old address*, the information will be

reported to the IRS (and your state tax authority) based on your Social Security number. Make sure payers have your correct address so you get a copy. Update your address with payers, and also put in a forwarding order with the U.S. Post Office. It's also a good idea to file an IRS change of address [Form 8822](#).

But if someone doesn't issue you a Form 1099, can you argue that means they thought it was nontaxable? Some people have tried. When it comes to legal settlements, the IRS says that the payor's intent is a key indicator how it should be taxed. Often, the character of a settlement payment hinges on the dominant reason of the payor in making the payment. Courts have determined the payor's intent by examining the entire record, including whether a Form 1099 was issued. Nevertheless, a payor's failure to issue a Form 1099 alone is not conclusive proof that a payment is not subject to tax. People have tried that argument with the IRS, and even in Tax Court. It hasn't worked so far.

Whether a Form 1099 should have been issued or not, the question is, is it income? Unlike Forms W-2, you don't file Forms 1099 with your return. Usually, if you know about your payment, you don't really need the form. One possible exception: the IRS suggests that if you don't receive a Form 1099-R, you should ask. An alternative to asking an issuer for a Form 1099 is to get a transcript of your account from the IRS. It should show all Forms 1099 issued under your Social Security number. That is better than asking for a Form 1099, especially for something like a lawsuit recovery. Besides, getting a transcript is a useful way to double check your information.

In general, a business taxpayer that makes a payment of \$600 or more to another taxpayer must file a Form 1099. There are different kinds, the two most common being Form 1099-MISC, and Form 1099-NEC for independent contractors.

Forms 1099 come in many varieties, including [1099-INT](#) for interest, [1099-DIV](#) for dividends, [1099-G](#) for tax refunds, [1099-R](#) for pensions, and [1099-MISC](#) for miscellaneous income. Newest of all is [new Form 1099-NEC for independent contractors](#). Use new [Form 1099-NEC](#) for consulting payments and any other form of independent contractor pay. If you receive one that includes the wrong dollar amount, you can ask the issuer to correct it, and there are several ways of making a correction. They can destroy the incorrect one if they have not already sent a copy to the IRS. If they have already sent a copy to the IRS, they can issue a corrected Form 1099. A corrected Form 1099 will supersede the incorrect one.

Unfortunately, there are many judgment calls companies have to make when issuing these forms. For example, most lawsuit settlements are reported, and in many cases the tax rules are not clear. If you settled a suit and received taxable damages, report the payment as income. But if you have arguments that the lawsuit recovery should not be taxable, the last thing you want is a Form 1099. Some damages are tax-free under [Section 104](#) of the tax code, but only physical injuries and physical sickness qualify. Receiving a Form 1099 can be especially worrisome for a lawsuit settlement, since it will likely be for 100%, even the funds paid to a contingent fee lawyer. And since 2018, in some [lawsuit settlements, legal fees can't be deducted](#).

*Check out my [website](#).*