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Oscar Academy Sues Over Racy \$230,000 Gift Bags

Every year at award season time, there are piles of free goodies for nominees and other celebs. Some call it 'swag,' and Oscar swag is the best and richest. Even wealthy people can be tempted by the allure of free items. And companies of all sorts want celebs to show off their gear. Make no mistake, companies write off the cost. Of course, celebs have to report it as income right? It's tax time after all, and fair is fair. A luxury gift bag isn't a Thanksgiving turkey from your employer. Does that mean the biggest winner is the IRS?

Sort of. This year, lawyers are winning too, with a lawsuit against the swag promoter that makes money by connecting companies and celebs. It's a clever business model with lots of hype. The Academy of Motion Picture Arts and Sciences hands out the awards. And it wants the public to know that it hasn't approved *any* of the swag items being tossed around as freebies. In 2006, the Academy stopped *officially* giving out gifts due to [IRS scrutiny](#). Now, in a [federal lawsuit](#) filed in Los Angeles, the organization that sponsors the Oscars has [accused Distinctive Assets of promoting the gift bags as "official" Oscars swag](#).



An Oscar statue is seen at the red carpet arrivals area as preparations continue for the 88th Annual Academy Awards at Hollywood & Highland Center on February 25, 2016 in Hollywood, California. (Photo credit: ROBYN BECK/AFP/Getty Images)

The lawsuit claims that, “Distinctive Assets uses the Academy’s trademarks to raise the profile of its ‘gift bags’ and falsely create the impression of association, affiliation, connection, sponsorship and/or endorsement.” The company’s founder, Lash Fary, is also named in the suit. The lawsuit argues that the many uses of terms like “official” and “Oscar Swag Bags,” suggests the Academy is approving them. The swag bags have also had run-ins with the IRS.

For years, the entertainment industry and the IRS locked horns over these ‘gifts.’ Eventually, the swag brouhaha was settled, with swag being taxable and celebs getting IRS Form 1099. Celeb or not, if you get a gift bag, you have taxable income equal to its fair market value. Can’t you argue this was a “gift” so it isn’t income? Hardly. These merchants don’t give them solely out of affection or respect. And though the value of these goodies really isn’t pay, you [must report it on your tax return](#).

In case any attendees forget, they receive an [IRS Form 1099](#) reporting it. Form 1099 is that irksome piece of paper keyed to your Social Security number. We have an honor system of tax return reporting, but it is nudged by all those Forms 1099. Put each one on your tax return or you’ll receive a tax bill. Remember, [mistakes with Form 1099 cost big](#), so if you’re [missing a Form 1099, keep quiet!](#)

This year, [Distinctive Assets](#) assembled the “Everyone Wins at the Oscars Nominee Gift Bag.” Twenty-one go to the host and losing nominees for best actor, best actress, best supporting actor, best supporting actress, and best director. This year’s swag bag is the most expensive ever, worth about \$230,000—a [40% increase](#) from last year’s already pricey \$160,000 bag.

The bags are not officially endorsed by the Academy, but they sure count. There’s competition to get in, and this year there are some [racy \(and unsavory\) items](#). There’s the Nuelle Fiera “Arouser for Her” (\$250), Vampire Breast Lift (\$1,900), Joseph’s Toiletries toilet paper (\$275), Haze Dual Vaporizer (\$250), and 740 Park plastic surgery (\$5,530). All sorts of products benefit from celebs giving them a try. Here is a [list of everything inside this year’s bag](#).

As a result, companies throw expensive goodies at nominees with effusive zeal. Although Oscars don’t have a [cash prize like Olympic medals](#), an Academy Award means more money in the future. Gift bags are taxable now, but what about gift certificates or vouchers for trips or personal services? If you redeem the certificates or vouchers, you include the fair market value of the trip or service on your tax return. If you make a selection in a ‘free shopping room,’ the value of your selection is income too.

Some celebs regift the bags or turn them down. They can take a charitable contribution deduction if they donate the gift bag to a qualified charity. But the fair market value of the gifts must still be reported on their tax return. And that’s where turning goodies down raises odd tax issues. If you turn down a bonus from your employer, it’s still income according to the IRS. If you say to “pay me next year,” it’s still income when you were handed the bonus and asked to delay it.

Organizations and vendors distributing gift bags issue IRS Forms 1099-MISC. So why don’t celebs receive a Form 1099 when they say ‘thanks, but no thanks’? A Form 1099 tags you with income after all, and they can be tough to untangle, though if you [disagree with an IRS Form 1099 you can try](#). IRS Form 1099 rules are voluminous and Byzantine. Many companies wisely figure it’s safer to issue a Form 1099 to anything that moves. I bet the IRS likes that.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.