



## Robert W. Wood

THE TAX LAWYER

TAXES 2/21/2015

### Oscars Hand Out Pricy Gift Bags, But Beware IRS Form 1099

Every year at award season time, there are goodies for nominees and other celebs. It's called swag, and Oscar Swag is the best and richest. Everyone wants celebs to show off their gear, so 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, and that means the biggest winner is the IRS.

It wasn't always so. For years, the entertainment industry and the IRS locked horns. That was before the IRS made its own Stark Trek, Gilligan's Island and Dance Party movies. 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? No, the merchants don't give them solely out of affection or respect. And though it 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, don't ask for it](#).



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 \$168,000.

The bags are not officially endorsed by the Academy of Motion Picture Arts and Sciences, but they sure count. There's competition to get in, and this year there are some strangely racy items. There's the Afterglow Pulsewave Vibrator worth \$250, a Couple's Love Shot orgasm booster worth \$5,000, and Naked Luxury Condoms worth \$28 for two 6-packs. Of course, there are many less erotic items too. All sorts of products benefit from celebs giving them a try.

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. When

billionaire oilman [Harold Hamm wrote a \\$975 million divorce check](#), the taxman would notice even if it was rejected.

Organizations and vendors distributing gift bags issue Forms 1099-MISC. So why don't celebs receive a Form 1099 when they say 'thanks, but no thanks'? Not long ago, Freddie S. Raley, an 83 year old disabled veteran, [sued Bank of America over an erroneous Form 1099](#). For technical reason, he didn't fare well, but suits over issuing a 1099 are becoming more common.

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](#).

If a vendor or customer maliciously issues one, can't you sue? Sadly, 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, follow me on Forbes.com. Email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*