

Prepare to Issue More IRS Forms 1099 Soon

By Robert W. Wood

Internal Revenue Service Forms 1099 are those pesky little tax forms you get in the mail at the end of January. No one likes receiving them, and probably no one likes issuing them either. But if you're in business or practice law, you need to know something about both issuing and receiving these forms. There are many varieties of Forms 1099, and the scope of information reporting obligations — and the penalties for failure — are changing dramatically.

There's a 1099-INT for interest; 1099-DIV for dividends; 1099-G for state and local tax refunds and unemployment benefits; 1099-R for pensions and payouts from your individual retirement accounts; 1099-B for broker transactions and barter exchanges; 1099-S for real estate transactions, etc. The general threshold is \$600, and the biggest category is arguably services. If you pay someone \$600 or more for services during the course of the year (cumulatively, so it could be in several smaller checks), you must report. One of the most common forms is the 1099-MISC for miscellaneous payments, including non-employee compensation and other income.

From the IRS' perspective, the beauty of Forms 1099 is that they match to your Social Security Number or taxpayer identification number.



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For that reason, pay attention to each one even if you receive dozens. If you're ever tempted not to report something, receiving a Form 1099 may keep that temptation in check. Omit even a small amount of income reported on a Form 1099, say \$200 of interest or a \$1,000 consulting fee you received, and you'll get a letter from the IRS asking for tax on that amount.

If you're in business or practice, you may worry less about receiving the forms and more about your obligations to issue these forms and IRS penalties if you misstep. The burdens on business in January and February (when businesses issue Forms 1099 for the prior year) seem to get worse every year. Forms 1099 must be mailed to taxpayers no later than Jan. 31 for the preceding year, and copies must be sent to the IRS no later than the end of February.

For the information return matching system to pay off, the IRS needs businesses to issue the forms. The IRS is getting tougher on penalties, and failing to issue a Form 1099 could even result in the IRS denying a tax deduction for the payment. The Patient Protection and Affordable Care Act, signed into law on March 23, 2010, added new reporting requirements. Likewise, on Sept. 27, 2010, the Small Business Jobs Act of 2010 added additional penalty provisions for failure to file Forms 1099.

One big change is payments for property. We are used to thinking about Forms 1099 applying to payments for services but not to payments for property. But under the new law, if a business makes payments aggregating \$600 or more to any one payee for property, it must issue a Form 1099.

Businesses still have to keep track of how much they pay their roving information technology consultant, plumber, etc., but now the reporting will extend to all manner of vendors. If you buy copy paper, Xerox supplies, paper cups, stationery, pleading paper, mailing lists, etc., you'll need to send Forms 1099 to all vendors who received \$600 or more. Since this is an aggregate rule, payments must be aggregated throughout the year, which many accounting systems aren't set up to do.

As big as this "property" change is, there is an even larger one. Starting with 2011 payments, any time a business pays "gross proceeds" of \$600 or more (again, aggregated over the course of 2011), a Form 1099 is required to be issued to the payee. Since no definition appears in the law, "gross proceeds" may be any payment whatsoever, presumably including payments to utility companies, clients, or virtually anyone else.

Corporations have always been subject to requirements that they issue Forms 1099 to others. In the past, though, corporations were generally exempt from Form 1099 rules (that is, from the requirement that payers must issue the forms to corporations). There were a few exceptions to this corporate immunity.

For example, for years we've had special Form 1099 rules for legal fees. Even incorporated law firms must be sent Forms 1099 for legal fees they earn. Under the new law, though, all corporations must be issued Forms 1099 even outside legal services. Starting with 2011 payments, all corporations must also be issued Forms 1099 just like individuals.

Congress and the IRS are serious about this, and that is evident in the new penalty provisions. The penalties on businesses that fail to issue the forms or to provide them to payees are also going up in January. Most of the penalties are small, but are geared to large scale and repetitive failures. Thus, the primary penalty for failing to issue a Form 1099 is \$50.

However, Congress has increased the aggregate penalties so that it's possible to face penalties of up to \$250,000 a year. There's even an "intentional disregard" penalty if you know you should issue the form but intentionally do not. That penalty is 10 percent of the aggregate amount that should have been reported on the form.

Businesses need to consider the mechanics of issuing the forms and even of gathering the necessary data. Even simple matters like getting taxpayer

identification numbers for all vendors may stymie some. Some vendors may operate under several names, making aggregation difficult.

Not all of these rules have taken effect, and repeal of at least some of them remains a distinct possibility. On Nov. 15, 2010, Sen. Max Baucus (D-MT) introduced the Small Business Paperwork Relief Act. If enacted, it would repeal many of these new rules. However, on Nov. 29, 2010, the Senate voted down this repeal bill. Its fate remains uncertain.

Nevertheless, even if some of these rules are repealed, the basic "\$600 or more for services" rule has been there for years and will remain. If you're in business or practice, you'll need to issue the usual Forms 1099 for services of \$600 or more by Jan. 31, 2011. Then, unless Congress repeals the changes, you need to start collecting information on all your 2011 payments so you can be prepared to issue Forms 1099 for property, gross proceeds, and to corporations in January of 2012.

This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.

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