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## New 1099 Reporting Requirements: What's Changing, and When

There has been a great deal of confusion about the new Form 1099 reporting requirements: what the changes are, when they will occur, and if they are related to group health insurance coverage that must be reported on Form W-2.

In this alert, we'll discuss:

- The new law on reporting payments on Form 1099, and when it takes effect
- Important news for rental property owners
- When group health insurance coverage must be reported on Form W-2

### The New Form 1099 Reporting Requirements

Some businesses have been confusing the new Form 1099 reporting requirements with the requirements for reporting group health insurance on Form W-2. This probably stems from the fact that Form 1099 reporting changes were enacted as part of the 2010 Health Care Act.

They are separate issues, however. We'll address reporting group health insurance coverage later in this alert. For now, we'll focus on what you need to know about reporting payments on Form 1099.

Previously, under IRS Code Section 6041(a) you were required to report payment for *services* and exempted payments to corporations on Form 1099. Whenever aggregate payments of \$600 or more were paid to a provider, the payee was required to file a Form 1099.

The provision in the 2010 Health Care Act added "amounts in consideration for property" to Code Section 6041(a). **This means that a business must now file a Form 1099 when the aggregate amount of payments made to another business for goods (property) or services totals \$600 or more in a year.** In another change, this now applies to payments made to non-tax-exempt corporations as well.

**The new regulations apply to payments beginning January 1, 2012 or thereafter, and will affect 1099s issued in 2013 for the 2012 year.**

The reporting changes were aimed at increasing filing compliance. The Joint Committee on Taxation estimates that the new regulations will raise federal tax revenue by \$17.1 billion over 10 years.<sup>[1]</sup>

<sup>[1]</sup> U.S. Congress, Joint Committee on Taxation, Estimated Revenue Effects of The Amendment in the Nature of A Substitute to H.R.4872, the Reconciliation Act of 2010, as Amended, in Combination with the Revenue Effects of H.R. 3590, the Patient Protection and Affordable Care Act (PPACA), as Passed by the Senate and Scheduled For Consideration by the House Committee on Rules on March 20, 2010, 111th Cong., 2nd sess., March 20, 2010, JCX-17-10.

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There have been several attempts to eliminate these new requirements altogether (which is not looking likely right now), or to increase the reporting threshold (which is a possibility). Much of the opposition has centered around the impact on small businesses, with concern that the increased costs of compliance will be a particular burden on this segment.

A September 10, 2010 Congressional Research Service Report said that “Empirical evidence tends to show that small businesses do in fact bear higher costs for tax compliance as a fraction of their size, when compared to larger businesses.<sup>[2]</sup> The report goes on to note, however, that there are several reasons that small business may be able to avoid at least a portion of any additional cost in the short run, and experience a decrease in any remaining costs in the long-run. These reasons are:

- The new requirements have simplified reporting by no longer requiring businesses to distinguish between goods and services, and corporate and non-corporate businesses. This should lead to reduced compliance costs.
- Most businesses already have an accounting system in place that should be able to accommodate the increased recordkeeping and paperwork.
- The IRS has said it intends to mitigate the burden in situations where duplicative reporting might arise. For example, the IRS has already proposed exempting transactions made with a credit or debit card.<sup>[3]</sup>

Stay tuned for further developments. We will relay information to you as we receive it. In the meantime, we encourage you to review your vendor and accounts payable systems to evaluate your ability to meet the new reporting requirements.

### **Do You Own Rental Property? New Reporting Requirements Begin in 2011**

If you own property that you are renting out and make payments of \$600 or more during 2011 to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income, the 2010 Small Business Jobs Act may require you to provide an information return (typically Form 1099-MISC) to the IRS and the service provider. To do so, you must obtain the payee's name, SSN, and contact information before making a payment. The IRS provides Form W-9 for that purpose.

There is a “Catch-22” you need to watch out for. Suppose you call a plumber and pay him \$400 for a service call at your rental property, and don't bother to have him complete and sign a W-9 since the amount is under \$600. Then, later in the year, you need him again and pay another \$400 for the second service call at the rental, and again fail to obtain the completed W-9. Now, you have a 1099 filing requirement but do not have the information needed to file the information returns in 2012. If the plumber can't be found, you are left holding the bag. Moral of this story: Always collect a completed W-9 from the payee before paying him!

What happens if you don't meet your filing obligation? Well, there are monetary penalties! As part of the 2010 Small Business Act, the penalties are doubled for information returns required to be filed after 2010. So if you are 30 days late filing the information return with the IRS or furnishing a copy to the payee, you are subject to a \$30 per-payee penalty. If returns are more than 30 days late but filed by August 1, the penalty per payee is \$60; if filed after August 1, the penalty jumps to \$100 per payee.

<sup>[2]</sup> Mark P. Keightley, Economic Analysis of the Enhanced Form 1099 Information Reporting Requirements, (Congressional Research Service, September 10, 2010), pg. 10.

<sup>[3]</sup> Ibid.

Atlanta  
**678.518.5301**

Chicago  
**630.682.9797**

Colorado Springs  
**719.528.6225**

Dallas  
**214.624.5077**

Denver  
**720.283.7326**

Indianapolis  
**317.885.2620**

Los Angeles  
**714.671.9300**

Orlando  
**407.883.4671**

San Diego  
**858.638.7220**

Tax Department  
**317.885.2620**

**The penalties can be substantial, and you are cautioned to establish a procedure for obtaining W-9s from your service providers before the beginning of 2011.** Note: Payments to incorporated businesses and those made for the purchase of merchandise are not included in these requirements until 2012.

### **Group Health Insurance Coverage Reporting Effective for 2011**

Reporting Cost of Group Health Insurance Coverage: Under IRC Sec. 6051(a) (14), the aggregate cost of applicable employer-sponsored coverage must be reported on employees' Form W-2. The IRS has announced that this reporting requirement is not mandatory for Form W-2 issued for 2011. Accordingly, an employer will not be penalized for failing to meet this requirement for 2011.

The IRS also issued a draft Form W-2 for 2011 with the codes for reporting the cost of coverage under an employer-sponsored group health plan. (See Notice 2010-69, 2010-44 IRB and News Release IR-2010-103.)

Please contact our Tax Department by email at [info@capincrouse.com](mailto:info@capincrouse.com) or by phone at 317-885-2620 for assistance or to learn more.