



FORMS 1099

STATUS

On April 4, 2011, H.R. 4, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 became Public Law Number 112-009. It repealed the infamous Form 1099 reporting expansion.

Public Law 111-148, the Patient Protection and Affordable Care Act (PPACA), signed into law on March 23, 2010, expanded the tax related information reporting requirements for all businesses. The new requirements apply to payments made to most vendors after December 31, 2011.

Public Law 111-240, The Small Business Jobs Act (SBJA), increased the penalties for inadvertent filing errors and added an additional reporting requirement for incidental landlords.

ISSUE

Under existing tax law, a business taxpayer making payments to a service provider (the “payee” in IRS language) aggregating to \$600 or more for services in the course of a trade or business in a year is required to send an information return to the IRS (and to the service provider-payee) setting forth the amount, as well as name and address of the recipient of the payment (generally on Form 1099). Under the law, the business taxpayer is not required to issue a Form 1099 to a corporation that provides services to it.

The new law made two changes. The first is to require businesses to issue the Forms 1099 to corporations as well as all persons in a trade or business.

The second is to expand significantly the scope by requiring the issuance for payments made to “property” providers as well as service providers.

The provision is effective for payments made after December 31, 2011.

The existing threshold of \$600 or more in payments remains as is.

The \$600 or more in payments is now for “rent, salaries, wages, amounts in consideration for property, premiums, annuities, compensations, remunerations, emoluments, gross receipts or other fixed or determinable gains, profits and income...”

The business taxpayer that issues the Form 1099 must first obtain the Taxpayer Identification Number (TIN) of the service/property provider-payee. If the service/property provider-payee does not provide the TIN to the business taxpayer, the business taxpayer must “backup” withhold from the payments at a 28 percent rate.

The Form 1099 is sent to the payee and to the IRS on or before January 31 of the year following the calendar year in which payments are made.

The new law added the phrase “amounts in consideration of property” as payments made to a provider that must be reported, but the law does not define the term “property.” From our discussions with the proponents prior to passage, we understand it to mean everything including the goods a business purchases for resale.

The payments that are included under this are not only those made directly by check but also those made by other means such as credit cards, for example. Think about the airlines, hotels, rental cars, and restaurants that appear on your credit card bill. You might not think of them as vendors of goods and services, but that is what they are. Also, if you are in the business of selling or distributing goods, all of your suppliers of products are also vendors under the new law. (Under existing law there are regulations that provide narrow exceptions for some types of vendors (telegrams, telephone, freight, storage) and some individual vendors that accept payment from you by credit card and meet qualifications set forth by the IRS. Even if some regulatory exceptions are carried over under the new law, you will still be the one responsible and liable for issuing the information report and it will not be easy.)

And, of course, any business that pays you more than \$600 will be sending you a Form 1099.

A separate new law has increased the penalties for if the business taxpayer fails to file the information return with correct information. The penalty is:

- \$30 per information return if you correctly file within 30 days (by March 30 if the due date is February 28); maximum penalty is \$250,000 per year (\$75,000 for small businesses)
- \$60 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty is \$500,000 per year (\$200,000 for small businesses)
- \$100 per information return if you file after August 1 or you do not file required information returns; maximum penalty is \$1,500,000 per year (\$500,000 for small businesses)

The definition of small business for this purpose is average annual gross receipts of \$5 million or less for the three most recent tax years (or for the period a business has been in existence, if shorter) ending before the calendar year in which the information returns were due.

The new penalties are effective January 1, 2011.

OUTLOOK

It took awhile but the deed is done.

The state of the law regarding tax information reporting reverts to what it was before the health care reform law was passed – Form 1099s are issued to non-corporate service providers, which most of us think of as “independent contractors.” The bill signed by the President includes a repeal of the expansion of the Form 1099 requirement included in the health care reform law, as well as an expansion established by another law that imposes the requirement on “incidental” rental property owners, to require them to issue the Form 1099 to the businesses that provide goods and services for their rental property. H.R. 4 “pays for” the repeals with a revenue offset that will recapture excess premium assistance that some individuals and families will get under the new health care system when it is fully implemented. The assistance is based on a front-end estimates, and actual eligibility determinations may show an individual or family received more assistance than for which they are qualified. The recapture is an adjustment on a later year’s tax return.