

Landlords Are Subject To New Tax Reporting Requirements

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Federal tax law has required that a person or entity engaged in a "trade or business" must file annual information returns (Form 1099) with the Internal Revenue Service reporting payments made to non-corporate entities that provide services to the business. Congress has now extended this reporting obligation to landlords who were previously not considered to be engaged in a trade or business for purposes of these rules.

Under the Small Business Jobs Act enacted in September 2010, landlords must now issue a Form 1099 to any independent contractor who provides services and is paid \$600 or greater in a calendar year, beginning with payments made after December 31, 2010. An independent contractor is defined as a non-corporate business entity, such as a sole proprietor or partnership and includes such payees as electricians, painters, plumbers, carpenters, yard services, repair people, accountants, attorneys and property managers.

The new reporting rules extend to owners of both commercial or residential rental properties. For example, an individual who owns a vacation property that is rented for part of the year to help defray his or her costs will be required to issue 1099 forms under these rules.

If you are a landlord, you should give each person or business who provides services to you a Form W-9 the first time you have a transaction with that person or business for the current year. This will allow you to obtain the name, address and taxpayer identification number of the service provider which you will need to file the Form 1099. You should get the completed form W-9 back before you pay service provider. If they do not get the completed form back, you are required to withhold 28% of their bill and send it in to the IRS. Form W-9 is available on the IRS website- www.irs.gov.

The new law does provide a few exceptions to the new reporting rules. First, if the amount of rental income received is "not more than a minimal amount," the individual will not be required to issue the Form 1099. The new law leaves it up to the IRS to determine whether an amount is "not more than a minimal amount," but so far the IRS has not provided any guidance on this issue.

Another exception applies to situations in which an individual is renting out his or her principal residence on a temporary basis. The law does not define temporary basis, but does provide that active members of the military renting out their principal residences qualify under this exception.

Finally, if an individual can demonstrate that the Form 1099 reporting will cause hardship, such individual is exempt from the reporting. However, similar to the "minimal" rental income threshold, it is up to the IRS to determine what constitutes a "hardship" and such guidance has not yet been issued.

The applicable Form 1099 and its cover sheet transmittal Form 1096, can be ordered from the IRS (the toll free number is on their website) or purchased at an office supply store. The form must be sent to the recipient of the payments on or before January 31 of the following year. The 1096 and 1099 forms must be mailed to the IRS on or before February 28th.

The issuance of 1099's is not elective, it is an absolute requirement. The IRS can impose penalties on a trade or business (which now includes landlords) for failure to file a correct information return.

An additional large expansion of information reporting has been scheduled to occur commencing in 2012 (the 2012 rules). The purpose of the 2012 rules, which were included in the Patient Protection and Affordable Care Act (i.e. "Health Care Reform"), was to reduce the under-reporting of business revenue from online sales and the over-reporting of business expenditures, and the overall general failure to supply the required Form 1099 because of uncertainty over which vendors were included in the current requirements.

If the 2012 rules go into effect, all businesses, including landlords, will be required to report any aggregate annual payment of \$600 or more to any person or entity from whom they acquire goods or services, including payments to corporations. Under the 2012 rules, it appears that landlords will have to issue 1099s for heat, lights, property taxes, insurance or purchases from corporate providers of supplies such as big box stores (Wal-Mart, Office Max, Home Depot, etc.).

On February 2, 2011, the U.S. Senate voted to repeal the 2012 rules. Although a similar bill has not been passed in the House of Representatives as of the date of this Article, many observers believe that Congress will repeal the 2012 rules.

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