

NAR Issue Brief

Information Reporting IRS Form 1099

During 2010, **two new information reporting requirements** have been added to the duties of property owners and owners of small businesses (including self-employed individuals and independent contractors). Both provisions are permanent.

Current Law

Anyone **engaged in a trade or business** is required to file a Form 1099 for payments of \$600 or more in any year. The business that makes certain expenditures must file a Form 1099 to reflect *payments* made for items including (but not limited to) rent, salaries, wages, and gains. The rule is imposed to assure that those who have *received* payments actually report the income. The payor files the Form 1099 with the IRS and with the party who *received* payments.

In the case of real estate, persons engaged in a trade or business would include *full-time* property managers and those whose primary business is property management and other real estate services. Some engaged in leasing activities could also fall within this requirement if they receive rental payments on the lease or otherwise manage the property.

This requirement of current law is different from (and in addition to) the requirement that BROKERS file Forms 1099 for their sales agents compensation and for proceeds related to certain transactions

Additional 1099 Reporting Requirement for 2011 -- Landlords

The recently-enacted small business legislation (HR 5297) included an expansion of the 1099 reporting related to a trade or business. To date, only those real estate professionals engaged in property management-type businesses have been required to file Forms 1099. Congress has extended the Form 1099 requirement to **any person** who receives rental income. This requirement would apply to any landlord (including a small investor), rather than only those who are in the business of managing property.

Starting in 2011, any person who receives rental income must provide a Form 1099 for **all payments** of \$600 or more made to **service providers** such as plumbers, carpenters, yard services and repair people. The purchase of goods is not included within the reporting requirement. The Form 1099 is provided to the IRS and to the service provider. The new requirement applies to both residential and commercial property.

Note: NAR had a Call for Action opposing this proposal in May 2010. Our message was that extending the 1099 reporting rules to small landlords is burdensome and is a trap for the “little guy.” The Call for Action had a high response rate, but Congress adopted the provision to help “pay for” provisions in the small business bill, including bonus depreciation and expensing for leasehold improvements.

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Additional Reporting Requirement for 2012 – Small Business Goods and Services

The Health Care Reform legislation enacted earlier this year adds a new, controversial and burdensome reporting requirement that goes into effect in 2012. The 2012 reporting requirement affects **any business** that makes a payment of \$600 or more to **any payee** (except a tax-exempt organization) for **property and services**. This provision expands the 1099 information reporting requirement of current law.

Several amendments were offered to the small business legislation that would have repealed or at least mitigated the impact of this new requirement. Those efforts failed. The amendments to mitigate the impact would have imposed the requirement only on those businesses with more than 25 (or 50) employees and/or payments of more than \$5000 to any particular vendor or service provider.

NAR is participating with groups seeking to repeal or modify this requirement.

BOTTOM LINE FOR REAL ESTATE

Current Law: Information reporting requirements **apply *only* to businesses.**

2011 Rule: ALL persons who receive rental payments must provide Form 1099. This affects ALL owners (both individuals and businesses) of rental properties, both residential and commercial. Thus, “mom and pop” investors and those who invest in real estate for their personal portfolios are subject to the new reporting requirement. Only aggregate annual payments of \$600 or more for services (but not goods) must be reported.

2012 Rule: All businesses, including real estate businesses, self-employed individuals and independent contractors will be required to make a 1099 report of any aggregate annual payment of \$600 or more to any person from whom they acquired *goods and services*.

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