

## FAQs About IRS Form 1099

By Robert W. Wood

Millions and millions of Forms 1099 are sent out every year. They can come any time of year, but most arrive around January 31 reporting payments for the prior year. The IRS relies heavily on them because the forms allow IRS computers to easily keep tabs on millions of payments. Even though the IRS audits only a small fraction of tax returns, the IRS matches nearly all Forms 1099 against your tax return, sending automated notices to pay up.

Yet despite their importance, there is considerable confusion about these forms. Here are some common questions and answers.

### If You Don't Receive a Form 1099, Should You Request it?

This is a judgment call, but you don't need the form if you know about a payment. Whether the form is reporting independent contractor pay, a legal settlement, or something else, if you know about the payment, you don't need the form. There is no mismatch on your tax return if you report a payment but didn't receive a Form 1099. Only the *reverse* is a problem.

Of course, you might want the form if you are uncertain how much you were paid, or how much the payer might be reporting. Keeping payors advised of your current address is a good idea, as is reporting errors to payers. But if you don't receive a Form 1099 that you expect, you know about the income, so just report that amount on your tax return. The IRS computers have no problem with that.

Besides, if you call or write the payer and raise the issue, you may end up with two of them, one issued in the ordinary course (even if it never got to you in the mail) and one issued because you called. The IRS computer might end up thinking you had *twice* the income you really did. Getting an IRS transcript is always a useful double-check. Issued under your Social Security Number, it will list all of the forms, so you know all Forms 1099 reported to your Social Security Number.

### Does Every Payment Trigger a Form 1099?

No, but it can sometimes seem like that. The basic Form 1099 rule is that each person engaged in business and making a payment of \$600 or more for services must report it on a Form 1099. The rule is cumulative, so while one payment of \$500 wouldn't trigger the rule, two payments of \$500 to a single payee during the year require a Form 1099 for the full \$1,000.

Generally, businesses must issue the forms to any payee (other than a corporation) who receives \$600 or more during the year. And that's just the basic threshold rule; there are many, many exceptions. That's why you probably get a Form 1099 for every bank account you have, even if you earned only \$10 of interest income.

### Are all Forms 1099 the Same?

No, there are many varieties. 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. In fact, there's a dizzying array. There

are many categories, but the Form 1099-MISC (for miscellaneous) seems to prompt the most questions and covers the biggest territory. And the newest 1099 is Form 1099-NEC for payments to independent contractors.

### Should you Report Errors on Forms 1099?

Yes, reporting errors is wise, so don't just put arriving 1099s in a pile, open them immediately. Suppose you get a 1099-NEC reporting \$8,000 of pay, when you know you received only \$800? Tell the payor immediately. There may be time for the payer to correct it before sending it to the IRS. If the payer has already dispatched the incorrect form to the IRS, ask the payor to send in a corrected form.

There's a special box on the form to show it is correcting a prior 1099—so the IRS doesn't just add the amounts together. The corrected form will cancel the first one. Besides, even if the payer doesn't fix it for you, keep a copy of your correspondence. It might help you convince the IRS you only got \$800.

### Does it Matter if You Get Form 1099-MISC or 1099-NEC?

Yes, it matters a lot. For payments in 2020 and later years, the IRS has a special form for independent contractors. Some say it was because of the gig economy. New Form 1099-NEC is specifically for paying independent contractors. So do not use Form 1099-MISC for that purpose: Use Form 1099-NEC instead. The NEC form tips of the IRS they should collect self-employment tax on top of income tax. Self-employment tax is equivalent to both halves of the employer and employee payroll taxes that apply to wages, which are reported on Form W-2.

Self-employment tax can add as much as 15.3 percent on top of income taxes. That 15.3 percent applies up to the wage base of \$168,600 with 2.9 percent tax thereafter on any excess over the wage base. There's no limit on that 2.9 percent, even if you earn millions. In short, self-employment tax is nothing to sneeze at.

A Form 1099-MISC is more neutral, just reporting income, but not saying it is subject to self-employment tax. Box 3 of MISC is the big one, "other income." Before 2020, there was Box 3 and Box 7 for non-employee compensation—but now Box 7 was made into its own form, Form 1099-NEC.

### Do Lawyers Receive Forms 1099?

Yes, in fact lawyers are singled out for special treatment. Nearly any payment to a lawyer is supposed to be reported, even if it's all the client's money. Case settlement proceeds count as gross proceeds, too. Say that a lawyer settles a case for, with payment to the lawyer's trust account. Even if the lawyer splits 60/40 with the client, the lawyer gets a 1099 for 100 percent.

But lawyers get a break, they usually receive Form 1099-MISC box 10, "gross proceeds paid to an attorney." It is a special box only for lawyers, and unlike other 1099s, it does not count as income. But apart from the very good deal that gross proceeds reporting is for lawyers, in other ways lawyers are disadvantaged when it comes to Forms 1099. Lawyers receive and send more Forms 1099 than most people, in part because of tax laws that single them out.

Lawyers must issue Forms 1099 to expert witnesses, jury consultants, investigators, and even to co-counsel if the payment is \$600 or more. Moreover, any client paying a law firm more than \$600 in a year as part of the client's business must also issue a Form 1099. It applies to law corporations too, even though corporations are exempt from receiving 1099s.

#### Does Your Mailing Address on Form 1099 Matter?

Yes and no. Regardless of whether the payer has your correct address, the information will be reported to the IRS (and the state) based on your Social Security number. But you want to see any forms that are issued, and that means by mail, so you have an interest in making sure payers have your correct address. Update your address directly with payers, as well as putting a forwarding order in with the U.S. Post Office. You'll want to see any forms the IRS sees.

#### If a Form 1099 is Wrong, Can You Ignore It?

No, it is not a good idea. The key to Forms 1099 is the IRS's computerized matching. Every Form 1099 includes the payer's employer identification number and the payee's Social Security (or taxpayer identification) number. The IRS matches the 1099 with the payee's tax return. If you disagree with the information on the form but you can't convince the payer you're right, explain it on your tax return.

Suppose you received a \$100,000 payment from your car insurance company to cover your medical expenses and pain from whiplash you suffered in an accident. A payment for personal physical injuries is excludable from income, and it shouldn't be the subject of a Form 1099. If you haven't succeeded in convincing your insurance company to cancel the 1099, try to explain it on your tax return. There's no perfect solution, but one thing is clear: If you receive a Form 1099, you can't just ignore it, because the IRS won't.

#### Can Failing to Report a Form 1099 Mean an Audit?

If you forget to report the \$300 of interest you earned on a bank account or the \$6,000 consulting payment you received, the IRS will send you a computer-generated letter billing you for the tax due. If it's correct, just pay it. The IRS sends millions and millions of these notices every year. The IRS may not "audit" many people, but these notices are low hanging fruit, and the IRS usually collects.

The state will also get a copy and has the same kind of computer matching program as the IRS. That way, they can spew out an automatic tax bill if you fail to report a Form 1099 on your state tax return. So if you fail to report a Form 1099 on your federal tax return, the state will probably catch up with it, too.

But if you received income that is NOT reported on a Form 1099, just report it as income. The IRS and FTB have no problem with that, it is not a mismatch.

#### Are Forms 1099 Always Sent in January?

Not always. Timing is everything, and it's true that businesses must send out Forms 1099 on or before Jan. 31 of each year for the prior calendar year. That means you should watch your mailbox carefully at that time of year. But some businesses send a Form 1099 at the same time they send you a check, so they won't have to send you a form later.

That means you might receive a Form 1099 at any time of the year. Besides, some companies are late, so don't assume you're off the hook if you don't receive a Form 1099 by March or April. Even May is not unheard of, so keep a lookout for Forms 1099 any time. When they arrive, open and check them, and then put them in a safe place.

#### Conclusion

Forms 1099 are a key part of the IRS's computer matching program, and nearly all of us receive payments reported in this way. Take these forms seriously, the IRS does.

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