

# New Rules Require Rental Property Owners to Issue 1099s

The recently enacted Small Business Jobs Act contained one provision that may have escaped the notice of taxpayers who own rental property, but will affect them starting in January. Under the provision, owners of property who receive rental income will be required to issue Forms 1099 to service providers for payments of \$600 or more during the year. The act subjects recipients of rental income from real estate to the same information-reporting requirements as taxpayers engaged in a trade or business. Thus, rental income recipients making payments of \$600 or more to a service provider in the course of earning rental income are required to provide an information return (typically, Form 1099-MISC, *Miscellaneous Income*) to the IRS and to the service provider. This provision will apply to payments made after Dec. 31, 2010, and will cover, for example, payments made to plumbers, painters or accountants in the course of earning the rental income. While rental property owners will not actually issue the required 1099s until early 2012, they need to start keeping adequate records of payments starting Jan. 1, 2011, so they will be prepared to issue correct 1099s. They will also need to obtain the name, address and taxpayer identification number of the service provider, using Form W-9 or a similar form.

## Exceptions

The law provides exceptions for individuals who can show that the requirement will create a hardship for them. The IRS is directed to issue regulations on this, but has not done so yet, so there is currently no guidance on what constitutes sufficient hardship to qualify for the exception or how a taxpayer would demonstrate that hardship. The law also contains an exception for individuals who receive rental income of "not more than a minimal amount." Again, the IRS is directed to issue regulations to determine what constitutes "not more than a minimal amount" but has not done so yet. If such guidance is not forthcoming before Jan. 1, all individuals who receive rental income should start keeping records of payments to service providers so they are prepared to issue 1099s in 2012. The law also contains an exception for members of the military or employees of the intelligence community if substantially all their rental income comes from renting their principal residence on a temporary basis.

## Information Return Penalties

Taxpayers should also be aware that in addition to creating a new reporting requirement, the act increases the penalties for failure to file a correct information return. The first-tier penalty increases from \$15 to \$30; the second tier penalty increases from \$30 to \$60; and the third-tier penalty increases from \$50 to \$100. For small business filers (with average annual gross receipts under \$5 million), the calendar-year maximum increases from \$25,000 to \$75,000 for the first-tier penalty; from \$50,000 to \$200,000 for the second-tier penalty; and from \$100,000 to \$500,000 for the third-tier penalty. The minimum penalty for each failure due to intentional disregard increases from \$100 to \$250. The increased penalties apply to information returns required to be filed on or after Jan. 1, 2011.

## Expanded 1099 Reporting After 2011

Currently, payments to corporations are excepted from the 1099 information reporting requirements, but starting for payments after Dec. 31, 2011, businesses (including, now, individuals who receive rental income) will be required to file an information return for all payments aggregating \$600 or more in a calendar year to a single payee, including corporations (other than a payee that is a tax-exempt corporation). This change was made by the Patient Protection and Affordable Care Act, which was enacted in March. That act also expanded the information reporting requirements to include gross proceeds paid in consideration for property.