

**SPECIAL ALERT:**  
***NEW REQUIREMENT* in the Small Business  
Jobs Act of 2010 FOR PROPERTY  
OWNERS—  
1099 THAT PLUMBER!**

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**Receiving Rental Income? Making Payment to Service Provider of \$600 or More?**

A new provision became effective on January 1, 2011, that may result in additional headaches for property owners. Now any person who, *in connection with receiving rental income, makes payments of \$600 or more to a service provider*—such as a plumber, painter, or accountant—**must submit a Form 1099** to that service provider and the IRS.<sup>1</sup>

While this is the same information-reporting requirement as traditionally applied to a taxpayer engaged in a trade or business, the requirement to report such payments was formerly not applicable to persons engaged in a passive investment activity. Thus, a taxpayer whose rental real estate activity was not considered a trade or business was not subject to such reporting requirements.<sup>2</sup> This new law applies to payments made after December 31, 2010.<sup>3</sup>

**Exceptions and Uncertainty**

The new provision does carve out **certain exceptions**, however. For example, it will **not apply to individuals (including active members of the military) who receive substantially all of their rental income from renting their principal residence on a temporary basis.**<sup>4</sup> In addition, the IRS may issue regulations to exempt individuals who receive a minimal amount of rental income and individuals for whom the requirement would cause a hardship.<sup>5</sup> Because such regulations have not yet been issued, and the legislative history does not give any indication of what a “temporary” basis may be, taxpayers are faced with some uncertainty, and may need to err on the side of caution by complying with these reporting requirements.

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<sup>1</sup> I.R.C. § 6041(h), as amended by P.L. 111-240, Sec. 2101(a) [the “Small Business Jobs Act of 2010”]. The information return is generally submitted electronically as a Form 1096 and Form 1099.

<sup>2</sup> Joint Committee Report JCX-47-10, P.L. 111-240.

<sup>3</sup> P.L. 111-240, Sec. 2101(b).

<sup>4</sup> I.R.C. § 6041(h)(2)(A).

<sup>5</sup> I.R.C. § 6041(h)(2)(B), (C).

## POWELL ON REAL PROPERTY

## SA-2

For example, a homeowner trying to sell a principal residence in a difficult market may have to “temporarily” rent out the residence, and without a clear definition of “temporarily,” may be faced with having to report that \$600 or more payment to a repair person or the leasing agency. This raises other unaddressed issues, such as whether the location of the taxpayer’s “principal” residence then changes if the taxpayer is forced to move yet was unable to sell the old residence.

### Penalties

The failure to file a Form 1099 where required can lead to penalties, which may include a penalty for failure to file the information return,<sup>6</sup> for failure to furnish payee statements,<sup>7</sup> or for failure to comply with other various reporting requirements.<sup>8</sup> These penalties were also increased by the Small Business Jobs Act of 2010. This means that property owners will have to obtain a Form W-9 from the service provider, which enables the payee property owner to provide the recipient of the payment with the required annual statement showing the aggregate payments made and contact information for the payor.<sup>9</sup> If a Form W-9 is not provided, the payor is required to “backup withhold” tax at a rate of 28 percent of the gross amount of the payment unless the payee has otherwise established that the income is exempt from backup withholding.

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<sup>6</sup> I.R.C. § 6721. The penalty for the failure to file an information return generally is now \$100 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$1,500,000 (smaller for small businesses). Additionally, special rules apply to reduce the per-failure and maximum penalty where the failure is corrected within a specified period.

<sup>7</sup> I.R.C. § 6722. The penalty for failure to provide a correct payee statement is now \$100 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$1,500,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement.

<sup>8</sup> I.R.C. § 6723. The penalty for failure to timely comply with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 for a calendar year.

<sup>9</sup> I.R.C. § 6041(d).