

Must Client File 1099 for Amounts Paid as Attorney Fees?

A client has requested that I provide her with my TIN for a 1099. The client is an individual, not a business. However, when I was paid, the check was issued by a partnership in which the client and her husband are co-equal and exclusive shareholders.

Individuals are not required to issue 1099 for payments for personal services. What I received was a payment for personal services. I represented the individual - not the partnership.

In this circumstance, is a 1099 required and am I required to disclose my TIN to this client?

The amount in question is greater than \$600, which is the threshold above which 1099s are required of businesses.

It appears that the relevant regulation is 26 CFR §1.6045-5 located here:

https://www.ecfr.gov/cgi-bin/text-idx?SID=c2c886e99695878af5affc3e6b9be4da&mc=true&node=se26.15.1_16045_65&rgn=div8

But the examples provided are not exactly analogous.

A separate question is whether amounts paid as a retainer and deposited in a client trust account, but not yet claimed as a fee are subject to 1099 reporting? This is the same client as in the first part of my question, but unlike what was paid directly as a fee, the amount in the client trust account cannot be claimed as a fee unless and until the fee has been approved by the Social Security Administration and approval has not yet been sought. The funds are the client's funds at this point.

Attorneys generally get 1099 if over \$600, to my understanding. Running some searches confirmed my understanding, but I did not tie it back beyond general guidance.

Darrell G. Stewart, Texas

I believe you are required to provide your TIN to someone that gave you money. Whether they should be filing a 1099 is a different question. There is a specific box to mark for money paid to an attorney (Box 12 maybe).

Nonetheless, if you received the money and attributed it to firm revenue, what is the downside?

Phil A. Taylor, Massachusetts

Not a tax professional so YMMV.

1099s need only be issued by those operating a business in any capacity when certain conditions are met (i.e., \$600 or more, attorney or medical services, etc.). An individual is not required to issue a 1099.

If you performed worked for the individual, they did not need to issue a 1099 but there is really no harm since you are claiming the revenue you made in your business anyway.

I suspect while you may have performed personal work for the individual, they paid you through their business and thus why you received the 1099.

Loyd J. Bourgeois, Louisiana

So, my CPA is telling me that we need to issue a 1099 for every lawyer with whom we fee-split, so I have to get W-9's from them. I believe him but I was surprised. Is that what everyone else is doing?

Deian McBryde, New Mexico

I believe the rule is 1099s don't generally need to be filed for a corporation but there is an exception for attorneys' fees, i.e., even if your practice is incorporated, the payor still needs to file a 1099 if more than \$600 is paid in the tax year.

Lee Kaster, California

It's all about tracing the money. If company X pays your client a big settlement and the check is written out to you, you are going to be expected to pay the tax on it.

Then you issue 1099s to everyone you've transferred the money to, so the IRS knows to go after them for some of that.

I think of it as CYA.

When I do contract work for other firms, I expect them to issue a 1099 to me. I may not get one from one firm, since I only did about \$150 of work, but the others will be issuing them.

Corrine Bielejeski, California

You're sending out 1099s even if you just received the money in trust and then paid it out to your client or other parties and never put it in your operating account?

Deian McBryde

To my understanding, your CPA is explaining general practices. Most commonly, a W-9 is obtained before funds are remitted on fee-splits between attorneys.

Darrell G. Stewart

This explains a bit more about the dilemma.

<https://blog.sfbar.org/2015/04/02/to-1099-or-not-to-1099-proper-reporting-of-client-settlements/>

I can only think of one case where the 3rd party didn't issue 2 separate checks and where I 1099ed my client. Why? Because I don't want the IRS thinking I earned the entire amount, particularly when I only earned a tiny bit of it. It's all about filing timely paperwork to avoid an audit and to support your position during an audit.

Think of it this way. If the IRS thinks you earned 100K on a particular case, because you receive a 1099 for that amount, but you actually paid me 25K of it, wouldn't you want the IRS to know you paid me that? Wouldn't you want me to include that in my taxes, rather than you including it in yours? That's the general principle.

Corrine Bielejeski

I've seen that article, and it's not entirely correct. Notice how there's no cite for the 'pay to the trust and don't 1099 anyone' paragraph?

Wages are reported on W2s. Wage-related claims (waiting time penalties, for example) are not reported on the W2, but a 1099.

All other taxable settlements are on a 1099.

It is the *payor's* responsibility to determine if a settlement is taxable or not; the IRS will generally respect an agreement, but is not bound by it.

If the check is *payable to the lawyer's trust only* then *both* the lawyer *and* the client get 1099s for the full amount. The lawyer does not have to 1099 the client. (This is the part the SF article got wrong, b/c it made it appear the client didn't get a 1099. They do.)

If the check is *jointly payable* (to lawyer and client), then the client gets a 1099 for the full amount, and the lawyer gets one for their fees.

Where lawyers split fees, then each lawyer/firm should get a 1099 from the payor in the amount of their fees. If the various lawyers/firms don't want to let the payor know the split, then the firm getting the fee must 1099 the other firms.

Them's the rules. They are frequently broken/ignored.

Gregory Zbylut, California