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2011 Instructions for Form 1099-K



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

Instructions for Form 1099-K. These instructions implement new reporting requirements under **Regulations section 1.6050W-1** effective for payments in calendar years beginning after 12/31/2010.

New Form 1099-K. Payment settlement entities may have to report merchant card payments and third party network payments on new Form 1099-K instead of Form 1099-MISC. See the separate instructions for Form 1099-MISC.

Reminder

In addition to these specific instructions, you should also use the 2011 General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G). Those general instructions include information about the following topics.

- Backup withholding.
- Electronic reporting requirements.
- Penalties.
- Who must file (nominee/middleman).
- When and where to file.
- Taxpayer identification numbers.
- Statements to recipients.
- Corrected and void returns.
- Other general topics.

You can get the general instructions from IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Specific Instructions

A payment settlement entity (PSE) must file Form 1099-K, Merchant Card and Third Party Network Payments, for payments made in settlement of reportable payment transactions for each calendar year. A PSE makes a payment in settlement of a reportable payment transaction, that is, any payment card or third party network transaction, if the PSE submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction.

A PSE is a domestic or foreign entity that is a merchant acquiring entity, that is, a bank or other organization that has the contractual obligation to make payment to participating payees in settlement of payment card transactions; or a third party settlement organization, that is, the central organization that has the contractual obligation to make payments to participating payees of third party network transactions.

A participating payee is any person, including any governmental unit (and any agency or instrumentality of a governmental unit) who accepts a payment card, or any account number or other indicia associated with a payment card, as payment or accepts payment from a

third party settlement organization in settlement of a third party network transaction.

A payment card is any card, including any stored-value card (having prepaid value, including gift cards), issued according to an agreement or arrangement that provides for all of the following:

- One or more issuers of the cards.
- A network of persons unrelated to each other, and to the issuer, who agree to accept the cards as payment.
- Standards and mechanisms for settling the transactions between the merchant acquiring entities and the persons who agree to accept the cards as payment.

A third party payment network is any agreement or arrangement that provides for the following:

- The establishment of accounts with a central organization by a substantial number of providers of goods or services who are unrelated to the organization and who have agreed to settle transactions for the provision of the goods or services to purchasers according to the terms of the agreement or arrangement.
- Standards and mechanisms for settling the transactions; and
- Guarantee of payment to the persons providing goods or services (participating payees) in settlement of transactions with purchasers pursuant to the agreement or arrangement.

A third party payment network does not include any agreement or arrangement that provides for the issuance of payment cards.

Unrelated means any person who is not related to another person within the meaning of section 267(b) using the rules of 267(c) and (e)(3), and 707(b)(1).

Exception for payments made by U.S. payers or middlemen to foreign payees after 2010. For payments under contractual obligations entered into after December 31, 2010, a PSE that is a person as described in Regulations section 1.6049-5(c)(5) as a U.S. payer or U.S. middleman, is not required to file Form 1099-K for payments to a participating payee with a foreign address as long as, prior to payment, the PSE has documentation on which the PSE may rely to treat the payment as made to a foreign person according to Regulations section 1.1441-1(e)(1)(ii) (substituting payer for the term withholding agent and without regard to the withholding requirements of chapter 3 of the Code and its regulations).

A PSE does not have to file Form 1099-K for payments made outside the United States (within the meaning of Regulations section 1.6049-5(e)) to an offshore account (as defined in Regulations section 1.6049-5(c)(1)) of a participating payee with only a foreign address if the name of the participating payee indicates that it is a *per se* corporation under Regulations section 301.7701-2(b)(8)(i) and the PSE does not know or have reason to know that the participating payee is a U.S. person.

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A PSE may apply the grace period rules under Regulations section 1.6049-5(d)(2)(ii) for payments to a participating payee with only a foreign address without regard to whether the amounts paid are described in Regulations section 1.1441-6(c)(2) or are reportable under Code sections 6042, 6045, 6049, or 6050N.

Exception for payments by U.S. payers to foreign payees prior to 2011. For payments under contractual obligations entered into before January 1, 2011, a PSE that is not a U.S. payer or U.S. middleman is not required to file a Form 1099-K for a payment to a participating payee with a foreign address as long as the payer does not know or have reason to know that the participating payee is a U.S. person.

A foreign address means any address that is not within the United States, including the District of Columbia.



A renewal of a contractual obligation will not result in a new contractual obligation unless there is a material modification to the contractual obligation.

Exception for payments made by non-U.S. payers or middlemen to foreign payees. A PSE that is not described as a U.S. payer or U.S. middleman in Regulations section 1.6049-5(c)(5) is not required to file a Form 1099-K for payment to a participating payee that does not have a U. S. address as long as the PSE does not know or have reason to know that the participating payee is a U.S. person. If the participating payee has any U.S. address, the PSE may treat the participating payee as a foreign person only if the PSE has documentation on which the PSE may rely to treat the payment as made to a foreign person according to Regulations section 1.1441-1(e)(1)(ii).

A U. S. address is any address that is within the United States, including the District of Columbia.

Non-reportable transactions. The following transactions are non-reportable under section 6050W.

- A withdrawal of funds at an automated teller machine (ATM) via payment card, or a cash advance or loan against the cardholder's account.
- A check issued in connection with a payment card that is accepted by a merchant or other payee and processed through the banking system in the same manner as a traditional check.
- Any transaction in which a payment card is accepted as payment by a merchant or other payee who is related to the issuer of the payment card.

Conversion of amounts paid in foreign currency.

When a payment is made or received in a foreign currency, the U.S. dollar amount must be determined by converting the foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in Regulations section 1.988-1(d)(1)) or according to a reasonable spot rate convention, such as a month-end spot rate or a monthly average spot rate. The convention must be used consistently for all non-dollar amounts reported and from year to year. The convention cannot be changed without the consent of the Commissioner or his or her delegate.

Reporting under sections 6041, 6041A, and 6050W.

Payments made by payment card after December 31, 2010, that otherwise would be reportable under sections 6041 (payments of \$600 or more) or 6041A(a) (payments of remuneration for services and certain direct sales) and 6050W are reported under section 6050W and not

sections 6041 or 6041A. For purposes of determining whether payments are subject to reporting under section 6050W, rather than sections 6041 or 6041A, the *de minimis* threshold, discussed later under *Box 1*, is disregarded.

Who Must File

Every PSE, which in any calendar year makes one or more payments in settlement of reportable payment transactions, must file an information return (Form 1099-K) with respect to each participating payee for that calendar year.

Multiple PSEs. If two or more PSEs, are obligated to make payment to participating payees for the same reportable transaction, the PSE who actually makes payment must file the return. However, the PSE obligated to file may designate another person to file the return, including the PSE not making payment, if the parties agree in writing. If the designated person fails to timely file the return, the party who makes payment is liable for any applicable penalties under sections 6721 and 6722.

If a PSE contracts with an electronic payment facilitator (EPF) or other third party payer (TPP) to make payments in settlement of reportable payment transactions on behalf of the PSE, the facilitator must file Form 1099-K in lieu of the PSE. The facilitator is not required to have any arrangement or agreement with the participating payee. Payments may come from the facilitator's account or via instructions to transfer funds to the account of the participating payee. The PSE can file Form 1099-K by designation if the parties agree in writing, however, the designation does not relieve the facilitator from liability for any applicable penalties under sections 6721 and 6722 for failure to comply with the information reporting requirements.

See part O in the 2011 General Instructions for Certain Information Returns for more information on penalties.

Aggregated payees. If you receive payments from a PSE on behalf of one or more participating payees and you distribute such payments to one or more participating payees, you are:

- The participating payee with respect to the PSE who sent you the payment(s), and
- The PSE with respect to the participating payees to whom you distribute the payments.

For more information on nominee/middleman reporting, see part A in the 2011 General Instructions for Certain Information Returns.

Statements to Recipients

If you are required to file Form 1099-K, you must provide a statement to the recipient. For more information about the requirement to furnish a statement to each recipient, see part M in the 2011 General Instructions for Certain Information Returns.

Furnishing statements electronically. Statements may be furnished to recipients electronically in lieu of a paper format. See Regulations section 1.6050W-2(a) for further information.

2nd TIN not. You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect TIN. If you mark this box, the IRS will not send you any further notices about this account. However, if you received both IRS notices in the same year, or if you received them in different years but they both related to information returns filed for

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the same year, do not check the box at this time. For purposes of the two notices in 3-years rule, you are considered to have received one notice. You are not required to send a second "B" notice upon receipt of the second notice. See part N in the 2011 General Instructions for Certain Information Returns for more information.



For information on the TIN Matching Program offered by the IRS, see the 2011 General Instructions for Certain Information Returns.

Filer's name, address, telephone number, and federal identification number boxes

Enter your name, address (including street address, city, state, and ZIP code) in the box in the upper left corner. Enter your federal identification number in the top box immediately to the right.

Filer check boxes.

Check the first (top) box in the section immediately below the FILER'S name, street address, city, state, ZIP code, and telephone number box if you are a PSE. Check the second box (bottom) if you are an EPF or TPP.

If you are an EPF or TPP, complete the PSE'S name and telephone number box above the account number box at the bottom left of the form. The phone number must allow a payee to reach a person knowledgeable about the payments reported on the form.

Account Number

The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 1099-K. Additionally, the IRS encourages you

to designate an account number for all Forms 1099-K that you file. See part L in the 2011 General Instructions for Certain Information Returns.

Box 1. Gross amount of merchant card/third party network payments

Enter in box 1 the gross amount of the total reportable merchant card/third party network payment transactions for the calendar year. Gross amount means the total dollar amount of total reportable payment transactions for each participating payee without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts or any other amounts. The dollar amount of each transaction is determined on the date of the transaction.

Exception for *de minimis* payments. A third party settlement organization is required to report any information concerning third party network transactions of any participating payee only if for the calendar year:

- The gross amount of total reportable payment transactions exceeds \$20,000, **and**
- The total number of such transactions exceeds 200.

For examples of reportable payment transactions, including responsible filing parties, see Regulations section 1.6050W-1(e).

Boxes 2 through 4.

Reserved.

Boxes 5a through 5l.

Enter in the appropriate box the gross amount of the total reportable payment transactions for each month of the calendar year.