

Tax Reporting on Timber Sales: Who Must File Form 1099-S to the IRS and the Seller?

By Linda Wang

What is Form 1099-S?

Form 1099-S (Proceeds from Real Estate Transactions) is used for reporting sale (or exchange) of real estate, including standing timber sales (Sec. 1.6045-4 and Sec. 6050N).

Example: Tim Cohen sold timber from his 44-acre woodland to a timber buyer for \$5,500. This sale of standing timber is required to be reported to the IRS, on Form 1099-S. The timber buyer agreed to file this form with the IRS plus furnishing a copy to Tim as part of the sale contract.

How does Form 1099-S work?

Form 1099-S works in the same way as a more common type of Form 1099s—Form 1099-INT—where your bank reports to you and the IRS the interest it paid to you during the year. So Form 1099-S shows the amount of a timber sale that can be used by the payment recipients to file their taxes and is also used by the IRS to match the amount against the recipient's tax return. It is also referred to as “information return.”

Example: Woodland property owner Sam Watson sold \$12,000 standing timber during the year. He received a 1099-S shortly after year end, which showed the gross proceeds of \$12,000 paid to him. His tax preparer used this 1099-S to file his income tax return. The IRS also received this form, which helps them match against Sam's tax return.

Is Form 1099-S required for a lump-sum or pay-as-cut standing timber Sale (or exchange)?

Form 1099-S is required for both lump-sum standing timber sales or exchange (effective after May 28, 2009) and pay-as-cut standing timber sales.

Lump-sum timber sale: The seller receives a fixed upfront payment, a more frequently used sale method.

Pay-as-cut timber sale: The seller is paid at a specified price per unit only for the amount of timber actually cut.

Exceptions. The following are exempt from the 1099-S reporting:

- Sales of less than a total of \$600 (or \$10 for pay-as-cut timber sale (Sec. 6050N (a)) are exempt from Form 1099-S reporting (Tax Regulation Sec.1.6045-4(c)(1)(iii));
- If the transferor (timber seller) is a corporation or a government unit, the sale is exempt from 1099-S reporting (Sec. 1.6045-4(d)(1))

Example. Timberland Incorporated sold \$21,200 standing timber this year. This is not reportable on Form 1099-S since the transferor (timber seller) is a corporation.

- High-volume sellers (sales of “at least 25 separate items of real estate”) are exempt from 1099-S reporting.

Is the taxpayer identification number required for preparing 1099-S?

Yes, the timber seller's social security number/taxpayer identification number is required for 1099-S reporting. The filer of Form 1099 may use Form W-9 or its substitute to request the timber seller’s taxpayer identification number. The records should be kept for four years.

What are the consequences for failing to file 1099-S?

Generally, failure to file without reasonable cause on or before deadline is subject to a penalty of \$100 per return, with the maximum penalty of not exceeding \$1.5 million (\$500,000 for small businesses) for a year.

Small business is defined as those whose average annual gross receipts are \$5 million or less for the three most recent tax years (ending before the calendar year in which the information returns were due).

The penalty will be reduced to \$30 per return (in lieu of \$100) if one correctly files within 30 days after the due date (see due date below), or \$60 per return (in lieu of \$100) if one correctly files more than 30 days after the due date but by August 1.

The penalty will not apply if one can show that the failure is due to reasonable cause or event that is beyond one’s control. Separate penalty (\$100 per return in general; \$30 or \$60 reduced rate if correction is made within the specified time period) may be imposed for failure to furnish correct payee (timber seller) statement.

Who is responsible for filing 1099-S?

1. The person responsible for closing the transaction:

- The settlement person on the Uniform Settlement Statement if such statement is used;
- The person who prepares the closing statement if the Uniform Settlement Statement is not used;

• If no closing statement is used, the person responsible for filing is (in the following order):

- a. The buyer's attorney or
- b. The seller's attorney

if such attorney is present at the delivery of either the buyer's note or a significant part of the cash proceeds to the seller or if the attorney prepares or reviews the preparation of the documents transferring legal or equitable ownership.

Example: Steve King, an attorney, was hired to prepare and review the timber sale contract and other legal documents transferring ownership for the sale by his client, Nancy Hart, a woodland owner who accepted a \$7,100 offer for her pine timber. There was no Uniform Settlement Statement used and the buyer did not have an attorney. Nancy's attorney Steve, who prepared and reviewed the legal document transferring ownership interest, is required to file 1099-S for the sale.

c. The disbursing title or escrow company that is most significant in disbursing gross proceeds.

2. If no one is responsible for closing the transaction as defined above, the person responsible for filing Form 1099-S is, in the following order:

- a. the mortgage lender;
- b. the seller's broker;
- c. the buyer's broker (a seller's or buyer's broker is the broker that contracts with the seller or buyer and is compensated for the transaction); or
- d. the buyer.

3. The designated person. You can enter into a written agreement at or before closing to designate who must file Form 1099-S for the sale.

Example: Sam Davidson owns 250 acres of woodlands and hires a consulting forester to manage his woodland property professionally. In one sale of Sam's standing timber, the parties designated his consulting forester to be in charge of filing Form 1099-S in a written agreement. In another sale of his timber, the buyer was designated to file 1099-S.

What is the deadline for filing 1099?

For 2011 transactions, file Form 1099 on paper by February 28, 2012, or April 2, 2012, if electronically. Electronic filing requires software. The IRS system does not provide a fill-in form option.

1. Send copy A to the IRS (along with Form 1096 if file on paper, not electronically);
2. Send copy B to the seller (transferor);
3. Keep copy C as the filer's records.

Is there an extension for time to file 1099-S?

Yes. There is an automatic 30-day extension of time to file. File Form 8809, *Application for Extension of Time to File Information Returns*, by the due date of the returns to request the 30-day extension. No signature or explanation is necessary.

Where to get Form 1099-S?

- To order the official printed IRS forms, call 1-800-TAX-FORM or order online at www.irs.gov/businesses/page/0,,id=23108,00.html.
- Do NOT use downloaded Form 1099-S from the IRS web as the online version is not scannable. Filing forms that cannot be scanned is subject to a fine of \$50 per return (Form 1099-S).

Is there any commercial service for helping with 1099 filing?

There are commercial services that provide 1099 filing and reporting, see a list of providers at the IRS website at www.irs.gov/efile/lists/0,,id=100422,00.html.

Is there a Form 1099 for timber owners?

If you apply and receive cost-share assistance, a Form 1099-G will be issued to you and reported to the IRS indicating the payment amount. Governmental units that administer the cost share payment such as state forestry/natural resource/farm agencies issue Form 1099-G.

Timber business taxpayers such as timber growing, logging or consulting businesses must file 1099-Misc. form for payments aggregating \$600 or more in any taxable year made to a single payee for services provided in the course of the timber business (except to corporate payees).

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