

# Timber Sales:

## Who Must File Form 1099-S to the IRS and the Seller?

By **LINDA Wang**

Form 1099-S (“Proceeds from Real Estate Transactions”) is used for reporting the sale or exchange of real estate, including standing timber sales (Tax Regulation Sec. 1.6045-4 and Tax Code Sec. 6050N). In this column we will explore some of the commonly asked questions regarding this form, as well as examples of how to use the form.

**Example 1.** *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 furnish 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 the more common type of Form 1099-INT by which the bank reports to you and the IRS the interest it paid to you during the year. Form 1099-S shows the proceeds of a timber sale, which can be used by the payment recipient (the seller) to file his or her income taxes and is also used by the IRS to match the amount against the recipient’s tax return. It is also referred to as the “information return.”

**Example 2.** *Woodland property owner Sam Watson sold \$12,000 worth of standing timber during the year. He received a 1099-S shortly after year’s 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.

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 (Tax Code 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 (Tax Regulation Sec. 1.6045-4(d)(1));
- High-volume sellers (sales of “at least 25 separate items of real estate”) are exempt from 1099-S reporting.



Linda Wang is a national timber tax specialist with the U.S. Department of Agriculture’s Forest Service, based in Washington, D.C.

## Is a Taxpayer Identification Number Required for Preparing 1099-S?

Yes, the timber seller's 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.

## What Are the Consequences for Failing to File 1099-S?

Generally, failure to file without reasonable cause on or before the deadline is subject to a penalty of \$100 per return, with the maximum penalty not to exceed \$1.5 million. A reduced penalty may apply if the failure is corrected within a specified time. In addition, a separate penalty may be imposed for failure to furnish a correct payee (timber seller) statement.

## Who Is Responsible for Filing 1099-S?

The person responsible for filing 1099-S is:

1. The person responsible for closing the transaction, including:
  - 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;
    - 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; or
    - 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 who 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 to designate who must file Form 1099-S for the sale.

**Example 3.** *Sam Davidson owns 250 acres of woodland 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.*

## What Is the Deadline for Filing 1099-S?

For 2011 transactions, the deadline is February 28, 2012, if filing on paper, or April 2, 2012, if filing electronically (electronic filing requires software). The IRS system does not provide a fill-in form option. When submitting be sure to:

- Send copy A to the IRS (along with Form 1096 if you file on paper vs. electronically);
- Send copy B to the seller; and
- 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," must be submitted by the due date of the returns to request the 30-day extension. No signature or explanation is necessary.

## Where Do You 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](http://www.irs.gov/businesses/page/0,,id=23108,00.html).
- Do not use downloaded Form 1099-S from the IRS website because the online version may not be scanned. 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: [www.irs.gov/efile/lists/0,,id=100422,00.html](http://www.irs.gov/efile/lists/0,,id=100422,00.html).

## Are There Other Form 1099s for Timber Owners?

If you apply and receive cost-share payment, a Form 1099-G ("Certain Government Payments") will be issued to you and reported to the IRS by the governmental units processing the cost-share applications. 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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