

Form 1099

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Section 6041 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that "all persons engaged in a trade or business and making payments in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ... of \$600 or more in any taxable year ... shall render a true and accurate return ... setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment."

Treasury Regulation Section 1.6041-1(b) provides that the term "all persons engaged in a trade or business" includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit, including organizations exempt from tax under Code Section 501(c). Thus, the term includes organizations such as ALA or its chapters which are tax-exempt organizations under Code Section 501(c)(6).

With respect to the types of payments that a chapter would normally make, there is one statutory exception and a number of regulatory exceptions. First, Form 1099 is not required for any wage payments paid to employees. Rather, Form W-2 is required to report the payment of wages to employees.

Treasury Regulation Section 1.6041-3 sets forth a number of exceptions for payments which do not need to be reported to the Internal Revenue Service ("IRS"). These include the following:

1. Payments to a corporation, other than certain payments paid to a corporation engaged in providing medical and health care services. I assume that none of the ALA chapters will be making these types of payments. Therefore, any payment to any corporation need not be reported to the IRS on a Form 1099.
2. Payment of bills for merchandise, telegrams, telephone, freight, storage, and similar charges. This would also appear to include payments for utilities. Note that this exception applies whether or not the recipient is a corporation. Therefore, any payments made for supplies, storage, telephone or utilities need not be reported to the IRS.
3. Payments of rent to real estate agents. In this case, the agent is required to make the report when the rents are remitted to the owner of the property. Any rent that is paid directly to the owner of the property, however, is reportable on Form 1099 if the owner is not a corporation and the rent exceeds \$600.

4. Payments made under reimbursement or other expense allowance arrangements where the reimbursements do not exceed the amount of the expenses incurred.

Although there are a number of other exceptions, none of them would seem to apply to ALA or any of its chapters.

Considering the nature of ALA's and its chapters' activities, it would appear that the primary types of expenditures for which a Form 1099 would have to be issued, assuming that the recipient is not a corporation, would be as follows:

1. Professional services, such as accountants and attorneys.
2. Rents.
3. Any other personal services, such as consulting, actuarial, computing, payroll, or management.

In summary, although ALA and its chapters are tax-exempt organizations, they are required to file Form 1099 where the amount paid to any given recipient exceeds \$600 during the year. However, a Form 1099 need not be issued to any corporation regardless of the services or products provided. In addition, no Form 1099 needs to be issued to providers of merchandise, telegrams, telephones, freight, storage and similar charges, such as utilities. The primary services for which a Form 1099 would have to be issued would be legal and accounting services, rent, and any other services such as actuarial, management, consulting, or payroll.

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