

1099 Reporting by Real Estate Brokers

Is a buyer's (or seller's) broker required to give its taxpayer ID to the listing broker?

Generally, yes! Many brokers are unaware and therefore surprised when they learn of this requirement. Since a listing broker is required to report any commission of \$600 or more paid to the buyer's broker on Form 1099-MISC, the listing broker needs the taxpayer ID of the buyer's broker to fulfill this requirement. However, if the buyer's broker is a corporation, then filing a 1099 form is not required. Still, the listing broker will need something in writing from the buyer's broker evidencing the corporation.

The California Franchise Tax Board (FTB) has concluded that a listing broker has an obligation to file an information return for commissions paid to the buyer's broker. (See, https://www.ftb.ca.gov/law/Technical_Advice_Memorandums/2005/20050003.pdf). FTB has also published a pamphlet entitled, "1099 Reporting for Real Estate Commissions" which provides an explanation of the FTB's position along with various example scenarios. (See, <http://www.car.org/legal/recasesandresources/real-estate-resources/FTB.PDF>)

How may a Listing Broker obtain the Selling Broker's Tax Information? The listing broker may send the buyer's broker IRS Form W-9 to request the taxpayer identification number that is needed to complete the 1099 form (See, <http://www.irs.gov/pub/irs-pdf/fw9.pdf> for a copy of the W-9). Alternatively, the listing broker may ask the buyer's broker to fill out a substitute W-9 by using form, Declaration Regarding Real Estate License and Tax Reporting (C.A.R. Form DLT).

What if the buyer's broker will not complete the 1099 or DLT form? The listing broker must take back-up withholding of 28% out of the payment due and forward that amount to the IRS. If listing broker does not collect backup withholding as required, listing broker may become liable for any uncollected amount.

When are 1099 Forms Due? The 1099 must be filed with the IRS by February 28, immediately following the year for which the income items or other proceeds are paid. However, the due date for filing electronically with the IRS is April 2. Additionally, copies of the forms must be sent to recipients by the end of January.

More info - <https://www.irs.gov/instructions/i1099msc/ar02.html>