



# From the Desk of Dean Zerbe.



## New 1099 Burden: Will It Be Repealed?

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### A campaign is building to repeal the new requirement for 1099 reporting of payments to companies.

The newspapers and blogs have been filled with the sound and fury of unhappy business folks who have suddenly "discovered" the crushing paperwork burden contained in the health care reform law: Beginning for payments made in 2012, all businesses, governments and charities will have to issue annual Form 1099s to all companies they buy goods and services from, if they pay those vendors more than \$600 in a year. These forms must also be sent to the Internal Revenue Service. All this paper is supposed to reduce tax cheating and thereby produce an additional \$19 billion in tax for Uncle Sam over 10 years. (Currently, only payments made to unincorporated sole-proprietor businesses must be reported on 1099s and to Uncle Sam.)

Outraged small business groups are now pushing hard for repeal of this requirement. First, I can't help asking: Where were they before this bad idea was adopted by Congress? Forbes readers have known about this proposal and the problems it would cause since my column of September 2009. At that point I warned "No one has done an analysis of the cost to business (it'll be a whopper)."

Now that I've taken my bows, let me try to provide some useful information going forward. With baseball in full season, here's my scouting report on the players and prospects in this repeal game.

#### **House Democrats: No interest in hitting this ball. Adept at finding excuses for not hitting the ball.**

Last Friday House Democrats offered a last-minute bill (HR 5982) including a repeal of the 1099 requirement for consideration by the House just before the August recess. Due to the fact that it was offered on a fast-track, the bill required a two-thirds vote for approval. The House Democrats proposed this at the last moment without providing

Republicans any advance notice--not a sign of seriousness of purpose. Republicans opposed the bill because the \$19 billion supposed cost of 1099 repeal was offset by \$19 billion in other tax increases, including a \$5 billion plus tax increase on estates, through limits on Grantor Retained Annuity Trusts. Another offset in the bill increased penalties on--wait for it--failure to comply with existing information reporting requirements.

The House Democrat leadership knows full well that these revenue raisers are nonstarters on the Senate side. So this last-minute bill was not an adult effort to remove the 1099 provision from the health bill--rather it was an effort to confuse and fog the issue.

Outlook: The House will continue to bat and blame the sun, the wind and other distractions for not getting to hit. If hitting matters, team owners (the voters) may wish to consider sending to minors and bringing up new hitter.

#### **The Senate: Some interest in hitting the ball but often afraid of the ball. Very good at staying at the plate and fouling off pitches.**

Sen. Michael Johanns, R-Neb., has offered an amendment to the small business tax bill (the bill I praised) that would strike the new 1099 requirement entirely--without any revenue producing offsets. The Senate leadership has put consideration of the small business bill aside to try to come to common agreement on how many amendments will be offered. The question will be whether the Johanns amendment will be allowed as one of the limited amendments and also if the Democrats will offer a substitute. If there is a substitute it would probably soften the burden somewhat by not requiring 1099 reporting if payments are made by credit card--something the IRS seems likely to do anyway. If it isn't made part of the small

business bill, look for the Johanns proposal to be offered as an amendment to any and every tax bill that moves this year. (Some bills will presumably have to move before the end of the year, since with so many provisions expiring this year or next, taxpayers are now living in a state of limbo.) But since the 1099 provision won't kick in until 2012, this issue could go into the next Congress even if other tax provisions are passed.

Outlook: Will continue to stay at the plate and look to swing at any hittable ball. Will eventually get a hit when pitcher tires.

#### **The Obama Administration: Has difficulty even finding stadium.**

The administration has, less than 100 days before the elections, suddenly discovered small business! What worries me is that the trip to the Taste Sub Shop only highlights the limited understanding of the administration (and many others in D.C.) when it comes to small business. It is this uninformed view of what "small business" includes--that it is only the local malt or soy latte shop--that explains why so much tax policy put forward in Washington does little to no good (if not actively harming) small business. The administration needs to recognize that helping small business also means helping the 180 person tool shop in Ohio, the 135-person engineering firm in Texas and the 280-person software company in California. It is these larger "small" firms that are going to do the new hiring in this economy. The small business bill put together in the Senate is a good start at helping these small businesses that are going to grow our economy.

Anyway, despite all its recent hosannas about small businesses, the administration has been strangely silent about repealing the 1099 proposal which was first put forward in its own budget.



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Outlook: Will do nothing to help team but will be happy to be in photo opportunity at the end.

## **IRS: Surprise hitter of difficult pitch.**

While the IRS is part of Treasury and thus technically part of the administration, it deserves some independent credit for proposing a partial softening to the 1099 reporting requirement. IRS Commissioner Douglas Shulman stated recently that when a business makes a purchase of goods or with a credit card, then there will not be a requirement for 1099 reporting. This is because of a recent change in law which requires credit card companies to begin reporting to the IRS on the gross credit card receipts of businesses. The IRS rightly reasons that if it is already getting reports on credit card purchases, it doesn't need a second report. Is this a full solution? No, but I want to give credit to the IRS for showing initiative and thinking of ways to reduce the burden on small businesses. Now if we could just get this started as a trend...

Outlook: Will wait and see what other hitters do.

## **Taxpayer Advocate. Can't hit fast-ball.**

The IRS taxpayer advocate first made noise on the 1099 issue this past July in a report to Congress. I wrote about this issue in September 2009. The health care bill was signed into law in March 2010. The 1099 expansion was a widely known provision and the consequences and impact of it were painfully obvious to every accountant that I talked to before and immediately after it passed. Where was the taxpayer advocate when it mattered? Why didn't the taxpayer advocate speak out when it could have actually had an impact--before the legislation was passed into law? It is hard to explain the taxpayer advocate's silence on this issue when it was being debated. Either the taxpayer advocate didn't realize the impact of this provision or didn't know it was in the bill--not good on either count. I have previously called for putting real teeth in terms of taxpayer rights for small business--I think added to that list Congress should consider the

creation of a small business advocate at the IRS. Small business deserves an advocate that puts them first.

Outlook: Popular with the press but rarely, if ever, gets a hit.

Business needs to keep the pressure on Congress and the administration--and with continued pressure there will most likely be significant changes, if not outright repeal, of the 1099 provisions before they are scheduled to take effect in 2012. Hopefully this repeal or modification might initiate a wider discussion and review of information reporting that looks to lightening the burden on small businesses seeking to comply with the tax laws, while balancing that with the fair concerns about addressing the tax gap.

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