1099-A Reporting Requirements May Apply to You

04.14.2011

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Most creditors are aware that a Form 1099-C, Cancellation of Debt, must be filed with the IRS upon a cancellation of debt. However, many creditors are unaware that a Form 1099-A, Acquisition or Abandonment of Secured Property, must be filed after foreclosures and certain repossessions even when the deficiency "stays alive" and no cancellation of debt has occurred.

Who must file. The 1099-A reporting requirements apply to any party who lends money in connection with its trade or business. The IRS casts a much wider net with the 1099-A than it does with the 1099-C, and many creditors who are not subject to the 1099-C requirements will still have to file a 1099-A. Even if you are not in the business of lending money, you may be required to file a 1099-A if you, in full or partial satisfaction of a debt, acquire an interest in property that is security for a debt.

When to File. A 1099-A must be filed upon the following three events:

1. *Foreclosure.* A creditor must file a 1099-A when, in full or partial satisfaction of a debt, it acquires an interest in real property that is security for the debt. A 1099-A is required even where there is a deficiency balance and the creditor intends to

attempt to collect the deficiency (in other words, when the deficiency “stays alive”). However, if there is a deficiency balance that is cancelled and a 1099-C is required, it is NOT necessary to file a 1099-A. Note that this requirement also applies where a creditor is not the first priority lienholder on the property if the creditor knows or has reason to know of the foreclosure, even if the creditor does not receive any part of the proceeds of the foreclosure sale.

2. *Claim and Delivery.* A creditor must file a 1099-A when, in full or partial satisfaction of a debt, it acquires an interest in personal property that is security for the debt, whether by claim and delivery, repossession or foreclosure. However, a 1099-A is only required if the personal property is held only for personal use. Reporting is only required if the property is totally or partly held for use in a trade or business or for investment.

3. *Abandonment.* A creditor must also file a 1099-A when the borrower intended to and has permanently discarded the secured property from use. If the creditor expects to commence a foreclosure, execution or similar sale within three months of the date of abandonment, reporting is not required until the date the creditor acquires an interest in the property or a third party purchases the property at the sale. If the creditor does not commence the foreclosure within three months, the reporting requirement arises at the end of the three-month period.

Filing Deadline. The deadline for furnishing a 1099-A to the borrower was January 31, 2011. The deadline for filing the 1099-A with the IRS was March 31, 2011 (if filing electronically). You can get an automatic 30-day extension of time by completing Form 8809, Application for Extension of Time.

Penalties. The penalties for failure to timely file the Form 1099-A are as follows:

1. $15 per information return if you correctly file within 30 days; maximum penalty $75,000 per year;
2. $30 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty $150,000 per year;
3. $50 per information return if you file after August 1 or you do not file the 1099-A at all; maximum penalty $250,000 per year.

These penalties are reduced for entities that qualify as small business according to the regulations. Many creditors are not aware of the 1099-A reporting requirements or are reporting incorrect amounts on the forms. Fortunately, the IRS has not taken an aggressive position on enforcing the 1099-A reporting requirements. However, several debtor watchdog groups have been trying to get the IRS to put these issues on their radar, so it is important to make sure your business is in compliance with these rules.

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