

REPORTING ACQUIRED OR ABANDONED SECURED PROPERTY AND CANCELLED DEBTS: FAQs ABOUT 1099-A & 1099-C

Now, more than in recent history, banks are faced with the realities of foreclosed, repossessed or surrendered collateral, as well as forgiven or cancelled indebtedness. Accordingly, it is important that banks understand the Internal Revenue Service's related reporting requirements. The following are some Frequently Asked Questions.

FAQ: What is the difference between a 1099-A and a 1099-C?

Answer: IRS Form 1099-A, Acquisition or Abandonment of Secured Property, is the form used by banks to report the bank's acquisition of, or the borrower's abandonment of, property that was previously pledged as collateral for a loan. Examples would include a mortgage foreclosure or a borrower's surrender of real property via a deed in lieu of foreclosure.

IRS Form 1099-C, Cancellation of Debt, is the form used by banks to report forgiven or "cancelled" debts of \$600.00 or more.

FAQ: When is a debt deemed "cancelled" for purposes of 1099-C reporting?

Answer: A debt is "cancelled" upon the occurrence of an "identifiable" event. The IRS considers the following to be "identifiable" events:

1. A discharge in bankruptcy for business or investment debt;
2. A cancellation or extinguishment making a debt unenforceable in a receivership, foreclosure, or similar court proceeding;
3. A cancellation or extinguishment when the applicable statute of limitations has expired, **only when** a debtor obtains a judicial determination that the statute of limitations has expired and the appeal period related to such judicial determination has expired.
4. A cancellation or extinguishment when the lender elects foreclosure remedies that, by law, bar the lender's right to collect the debt.
5. A cancellation or extinguishment due to a probate or similar proceeding.
6. An agreement between the lender and borrower agreeing to cancel the debt for an amount less than what is owed (this is very common in workout negotiations).
7. A discharge of indebtedness based on bank's decision or policy to discontinue collection activity and cancel the debt (**note...this is not synonymous with a bank's decision to put a loan on non-accrual**).

8. The expiration of a nonpayment “testing” period, during which time the bank does not receive any payments on the debt. The testing period is a 36 month period ending on December 31, plus any time that the bank was not allowed to pursue collection due to a bankruptcy stay or similar state law. The bank can rebut the occurrence of an identifiable event if:
 - A. The bank has conducted bona fide collection activity during the 12 month period ending on December 31 (must be more than just automated mailings); or
 - B. Facts exist on January 31 following the end of the 36 month period that indicate that the debt was not cancelled.

FAQ: What amount must be reported on a 1099-C?

Answer: The principal amount of the cancelled debt **must** be reported; however, non-principal amounts such as interest, penalties, fees, **need not** (but **may**) be reported.

FAQ: Does a 1099-C need to be filed for borrowers and guarantors?

Answer: A 1099-C must be filed for borrowers of cancelled debt. A bank does not need to, but may, file a 1099-C against guarantors of cancelled debt.

The need for 1099-A and 1099-C reporting has become more prevalent due to the continuing economic conditions and, accordingly, it is important that banks understand when they must file the 1099s. As illustrated by the FAQs discussed above, there are many complexities and nuances that need to be understood to correctly report acquired or abandoned secured property and/or cancelled debt.

Please contact David Anastasi or Nicholas Jellum with any additional questions that you may have.