

# **BENNETT & COMPANY**

***CERTIFIED PUBLIC ACCOUNTANTS***

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Dear Client:

The Small Business Job Creation and Access to Capital Act of 2010 enacted on September 27, 2010 introduced an array of income tax law changes and mandates. Included in the legislation is a directive for individuals that rent out real property are now required to report certain payments to the IRS annually. Beginning with payments made on January 1, 2011 and thereafter, with certain exceptions, taxpayers receiving income from rental real estate are considered to be in the "trade or business" of renting property, and thus are subject to the same information reporting requirements as other taxpayers in trades or businesses. Therefore, as an owner of rental property, when you make payment(s) of at least \$600 to a service provider (such as an electrician, painter, etc., including for items such as lawn care and snow removal) during the tax year, you are required to file an information return with IRS and also with the service provider. Typically, these payments are reported on Form 1099-MISC. The amounts paid to the service provider are aggregated for the calendar year in meeting the \$600 rule.

You will need to acquire from each individual or business their correct name, address and Identification Number used for income tax filing purposes. This number in some cases may be an Employer Identification Number and in other cases it may be a Social Security Number. You should use IRS Form W-9 for this purpose. Where a service provider fails to provide you with the correct information you are required to withhold 28% of all payments to the service provider. Failure to file the required Form 1099 can result in penalties \$250 per form up to \$1,500,000.

Certain taxpayers are excluded from this information reporting. You will not have to report payments to service providers if you fit within one of the following categories:

- An individual who receives rental income of a "minimal amount". This amount is not defined by the law and will be determined by the Treasury Department and issued under IRS regulations;
- An individual who receives substantially all rental income from renting his principal residence on a temporary basis. This category includes active members of the uniformed services and employees of the intelligence community; and
- Any other individual for whom the information reporting requirements would cause hardship.

Note that the exceptions refer to individual taxpayers. It appears, therefore, if you own rental real estate as a corporation, partnership, limited liability company, trust, estate or other entity, that entity will be subject to the information reporting rules even if one of the above conditions is met. In addition, many of the terms used are not defined and will need to be clarified through guidance by IRS.

Please keep in mind that this is only an overview of the new rental real estate information reporting rules. We will try to keep you updated on the requirements and rules as adopted by the IRS for this purpose.

Very truly yours,

Bennett & Company, CPA's