



## 2024 FEDERAL TAX WORKBOOK

# Form 1099 Issues for Various Taxpayers

# Chapter 3: Form 1099 Issues for Various Taxpayers

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**Note.** Corrections for all of the chapters are available at [TaxSchool.illinois.edu](https://taxschool.illinois.edu). For clarification about terms used throughout this chapter, see the **Acronyms and Abbreviations** section following the index.

For your convenience, in-text website links are also provided as short URLs. Anywhere you see **uofi.tax/xxx**, the link points to the address immediately following in brackets.

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The IRS has increased their emphasis on income reporting on Forms 1099 to counteract underreporting by taxpayers. Taxpayers may be surprised to receive a Form 1099, which could be Form 1099-K, *Payment Card and Third Party Network Transactions*, Form 1099-MISC, *Miscellaneous Information*, or Form 1099-NEC, *Nonemployee Compensation*.

The IRS anticipated 44 million Forms 1099-K to be distributed in 2023,<sup>1</sup> and many of those recipients may not have expected a Form 1099-K or known how to comply with reporting regulations. Consequently, more taxpayers may have questions or issues regarding the disclosure of Form 1099-K income reporting on their tax returns. Particularly, taxpayers engaged in activities such as crowdfunding, gambling, reselling tickets, student athletics, and research participation may receive a Form 1099.

## GENERAL FORM 1099-K ISSUES

Form 1099-K was first used in 2012 to report certain payments received through a credit card, payment app, or online marketplace, totaling more than **\$20,000** and if the total number of such transactions exceeded 200 in 2011.<sup>2</sup> Third party settlement organizations (TPSO) and payment settlement entities (PSE) are subject to the reporting requirements for transactions they process.<sup>3</sup> TPSOs are organizations contractually obligated to remit payment to payees in third party network transactions (e.g., Paypal and Venmo) and include online marketplace services (e.g., eBay and Airbnb).<sup>4</sup> Third party network transactions are agreements or arrangements where an unrelated central organization settles transactions for the provision of goods and services for payment.<sup>5</sup> PSEs include banks and credit card processing companies such as Bank of America and American Express.

**Note.** Healthcare networks, in-house accounts payable departments, and automated clearing houses are not considered TPSOs and are not subject to the reporting requirements under IRC §6050W.<sup>6</sup>

Congress intended to lower the dollar threshold of the reporting requirement to \$600 effective for payments made in 2022.<sup>7</sup> The 200 transactions threshold would remain the same. However, the IRS has been delaying implementation and is **retaining the \$20,000 and 200 transactions thresholds for 1099-Ks through 2023**. As of this publication, the plan is to reduce the threshold to **\$5,000 for 2024** as part of a phase-in process.<sup>8</sup>

As the threshold is lowered, many taxpayers who receive a Form 1099-K may not expect one and may not have a tax obligation on the reported income. The IRS is working on updating Form 1040, *U.S. Individual Income Tax Return*, and the related schedules to make it easier for taxpayers to properly report income included on Forms 1099-K.<sup>9</sup>

<sup>1</sup> *IRS announces delay in Form 1099-K reporting threshold for third party platform payments in 2023; plans for a threshold of \$5,000 for 2024 to phase in implementation*. Jan. 8, 2024. IRS. [www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation] Accessed on Sep. 5, 2024.

<sup>2</sup> *Housing and Economic Recovery Act of 2008*, PL 110-289, §3091; Instructions for Form 1099-K (2011).

<sup>3</sup> Instructions for Form 1099-K.

<sup>4</sup> *Ibid.*

<sup>5</sup> IRC §§6050W(c)(3) and (d)(3).

<sup>6</sup> Instructions for Form 1099-K.

<sup>7</sup> *American Rescue Plan Act of 2021*, PL 117-2, §9674.

<sup>8</sup> *IRS announces delay in Form 1099-K reporting threshold for third party platform payments in 2023; plans for a threshold of \$5,000 for 2024 to phase in implementation*. Jan. 8, 2024. IRS. [www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation] Accessed on Sep. 5, 2024.

<sup>9</sup> *Ibid.*

Nearly every participating payee who accepts credit or debit cards or receives payments through online marketplaces is subject to reporting requirements under §6050W. A **participating payee** is any person, including any governmental unit that accepts a payment card, or any account number or other data associated with a payment card, as payment or accepts payment from a TPSO in settlement of a third-party network transaction.<sup>10</sup> While the IRS claims that personal payments from family and friends should **not** be included on Form 1099-K,<sup>11</sup> the ability to designate such payments as excludable is dependent upon the software and the user capabilities.

Taxpayers who receive a Form 1099-K should review the form, determine if the amount is correct, and calculate any deductible expenses associated with the income. The form or schedule on which the income is reported depends upon the nature of the transactions. For tax purposes, income may be classified as any of the following.<sup>12</sup>

1. Personal transactions such as gifts and reimbursements for which a Form 1099-K should not be issued.
2. Payments in exchange for goods or services. Depending on the circumstances, such transactions might be reportable as the following.
  - a. Self-employment (SE) income
  - b. Hobby or other non-business income
  - c. Capital gains/losses, subject to applicable limitations
3. Passive income, such as rental income.

**Note.** A taxpayer may receive more than one type of income from the same reporting entity reported in the total income on the issued Form 1099-K. Taxpayers should use proper accounting methods to classify the types of income they receive. Additionally, they should maintain proper documentation supporting the nature of the income and expenses they report.

## BEST PRACTICES FOR REPORTING FORM 1099-K INCOME<sup>13</sup>

The following are best practices for taxpayers to accurately report Form 1099-K income.

### Review Form 1099-K

In addition to the number of transactions and amount of payments received, Form 1099-K discloses additional information provided by the issuing merchant. One such piece of information is a merchant category code (MCC) that is reported in box 2. Containing 4-digit numbers, MCCs serve as a classification code for the types of goods or services sold by the recipient of Form 1099-K. Taxpayers should check the accuracy and appropriateness of the reported MCC, as an incorrect code could potentially impact the comparative analysis performed by the IRS leading to a notice or examination. To avoid this potential outcome, taxpayers should notify the issuing PSE or TPSO of any incorrect MCC reported on their Forms 1099-K and request the issuance of corrected forms.

<sup>10</sup> Instructions for Form 1099-K.

<sup>11</sup> *Understanding your Form 1099-K*. Dec 22, 2023. IRS. [www.irs.gov/businesses/understanding-your-form-1099-k] Accessed on Dec. 30, 2023.

<sup>12</sup> *What to do with Form 1099-K*. Mar. 4, 2024. IRS. [www.irs.gov/businesses/what-to-do-with-form-1099-k] Accessed on Apr. 22, 2024.

<sup>13</sup> *How to Reconcile the Difference between Gross Receipts and Receipt Reported on Form 1099-K*. Sep. 11, 2017. Legacy Tax & Resolution Services. [www.legacytaxresolution.com/blog/how-to-reconcile-the-difference-between-gross-receipts-and-receipt-reported-on-form-1099-k/255877] Accessed on Apr. 22, 2024.



There may be situations where the taxpayer receives a Form 1099-K that includes income reporting of multiple entities. Known as **aggregated payees**, these taxpayers receive the payment of funds on behalf of other entities and then distribute the payment to the other entities. The aggregated payees should **receive** a Form 1099-K reporting the payments they received and also **issue** a Form 1099-K or Form 1099-MISC, as appropriate, to the entities to which they distributed the funds.<sup>14</sup> Additionally, a taxpayer may have multiple sources of business income but receives only a single Form 1099-K from a PSE. In such cases, the IRS instructs taxpayers to report the income on the appropriate lines or schedules.<sup>15</sup>

## Reporting Considerations

Box 1a of Form 1099-K reports the amount of gross payment received through payment card and third party network transactions. This amount is not adjusted for any fees, credits, refunds, shipping, or discounts. The reported gross payment generally includes processing and transaction fees even though they were deducted from the recipient's net payment. Additionally, the gross payment may also include non-income items such as sales tax receipts or tips. The IRS advises taxpayers to report the gross income as shown in box 1a and to report any adjustments and non-income items as deductions.<sup>16</sup> This best practice is an attempt to prevent a mismatch notice from the IRS.

If Form 1099-K includes receipts for the sale of personal items, the reporting of such income depends on whether the items were sold at a gain or a loss. If sold at a **gain**, such transactions are taxable (to the extent the proceeds exceeds the taxpayer's adjusted basis) and reported on Form 8949, *Sales and other Dispositions of Capital Assets*, and Schedule D, *Capital Gains and Losses*. If sold at a **loss**, such transactions are not taxable, but also do not receive benefit from a loss deduction. The IRS recommends reporting the proceeds from such losses in part I, line 8z of Form 1040, Schedule 1, *Additional Income and Adjustments to Income*, and reporting the offsetting adjustment in the same amount in part II, line 24z of Form 1040, Schedule 1. Alternatively, taxpayers may report personal item losses on Form 8949 and Schedule D.<sup>17</sup>

## Reconciliation

To ensure the accuracy of income reporting to the IRS, it may be valuable for taxpayers to reconcile their income with the reported receipts on issued Forms 1099-K. Such a process can help taxpayers identify any errors and non-taxable receipts. For example, box 1a of Form 1099-K may include cash back payments for customers if the taxpayer accepts payment methods offering such rewards. This portion of the received payment should not be included in gross receipts on a taxpayer's tax return. The IRS provides guidance that states such items are not claimed as income or backed out as a business expense.<sup>18</sup> Therefore, it is important for the taxpayer to identify such items that may be included on Form 1099-K to prevent reporting non-taxable receipts on their income tax returns.

When reconciling business income to Forms 1099-K, taxpayers should also consider any income that may have also been reported on a Form 1099-MISC to prevent double-reporting income. While in most situations a payment falling under both Form 1099-K reporting requirements under §6050W and Form 1099-MISC filing requirements under IRC §6041 should only be reported on Form 1099-K,<sup>19</sup> errors may occur, and a reconciliation can help identify such errors.

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<sup>14</sup> Treas. Reg. §1.6050W-1(d)(1); *What to do with Form 1099-K*. Mar. 4, 2024. IRS. [www.irs.gov/businesses/what-to-do-with-form-1099-k] Accessed on Apr. 22, 2024.

<sup>15</sup> *What to do with Form 1099-K*. Mar. 4, 2024. IRS. [www.irs.gov/businesses/what-to-do-with-form-1099-k] Accessed on Apr. 22, 2024.

<sup>16</sup> *Comingled 1099-K*. Jun. 21, 2023. IRS. [www.irs.gov/pub/taxpros/2023ntf-11-comingled-1099-k.pdf] Accessed on Apr. 23, 2024.

<sup>17</sup> *What to do with Form 1099-K*. Mar. 4, 2024. IRS. [www.irs.gov/businesses/what-to-do-with-form-1099-k] Accessed on Apr. 22, 2024.

<sup>18</sup> Ibid.

<sup>19</sup> *IRC Section 6050W Frequently Asked Questions*. Jul. 31, 2012. IRS. [www.irs.gov/pub/irs-utl/irdm\_section\_6050w\_faqs\_7\_23\_11.pdf] Accessed on Apr. 23, 2024.

There may be challenges taxpayers face when attempting to reconcile Forms 1099-K. For example, a TPSO's or PSE's cutoff date for reporting transactions may differ from the taxpayer's (generally the taxpayer's yearend). In such cases, performing a reconciliation and attaching it to the return may help prevent IRS notices if reconciling differences exist between the Form 1099-K and a taxpayer's income tax return.

### RECIPIENTS OF A NOMINEE FORM 1099<sup>20</sup>

A person who receives a Form 1099-K for amounts actually belonging to another person is considered a **nominee recipient**.<sup>21</sup> This is different from a Form 1099-K that is issued in error.

**Note.** The IRS advises taxpayers to include **incorrect** amounts reported on a Form 1099-K as additions in part I of Form 1040, Schedule 1. Taxpayers should enter the appropriate subtraction in part II to arrive at the correct amount of income to report on their income tax return.

If a taxpayer's information and the transactions amount are correct, but the money was actually received on behalf of another, **the nominee, not the original payer**, is responsible for filing a Form 1099-K for the true recipient. Spouses are not required to file a nominee return to show amounts owned by the other spouse.<sup>22</sup>



#### Practitioner Planning Tip

In situations regarding nominee recipients where the spouses do not file jointly, the nominee would be well advised to put a disclosure with their return regarding the nominated income.

The required Forms 1099-K are filed with Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*, at the IRS Submission Processing Center for the nominee's area. On the forms, the nominee is listed as the "filer" and the true recipient as the "payee."

**Example 1.** In 2019, Penelope's friend, Derek, asked her to help him find a way to accept electronic payments when he started his new business. She created the account with the payment processor and used her own information when the registration form asked for "Your" name and tax identification number. She subsequently forgot all about it.

In 2024, Derek processed more than 200 payments totaling more than \$20,000. Penelope received a Form 1099-K from the processor reporting the income under her name and identification number. Penelope used the information on the Form 1099-K she received to send Derek the following Form 1099-K. She sent the Form 1099-K's Copy A, *For Internal Revenue Service*, to the IRS address shown in the instructions with a signed fileable copy of Form 1096. A portion of her copy of the Form 1096 is shown next.

<sup>20</sup> *What to do with Form 1099-K*. Mar. 4, 2024. IRS. [www.irs.gov/businesses/what-to-do-with-form-1099-k] Accessed on Apr. 22, 2024.

<sup>21</sup> General Instructions for Certain Information Returns (2024).

<sup>22</sup> Ibid.

### For Example 1

☐ CORRECTED (if checked)

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		FILER'S TIN <b>37-1334247</b>		OMB No. 1545-2205		<b>Payment Card and Third Party Network Transactions</b>
<b>Penelope Garcia, Nominee</b> <b>1234 Range Rd</b> <b>Quantico, VA 22134</b> <b>555-005-2024</b>		PAYEE'S TIN <b>85-1334247</b>		Form <b>1099-K</b> (Rev. March 2024)		
		1a Gross amount of payment card/third party network transactions \$ <b>240000.00</b>		For calendar year <b>2024</b>		
		1b Card Not Present transactions \$ <b>240000.00</b>		2 Merchant category code <b>1799</b>		
Check to indicate if FILER is a (an): Payment settlement entity (PSE) <input type="checkbox"/> Electronic Payment Facilitator (EPF)/Other third party <input type="checkbox"/>		Check to indicate transactions reported are: Payment card <input type="checkbox"/> Third party network <input type="checkbox"/>		3 Number of payment transactions <b>240</b>		<b>Copy B For Payee</b>  This important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.
PAYEE'S name  <b>Derek Morgan</b>  Street address (including apt. no.)  <b>1236 Range Rd</b>  City or town, state or province, country, and ZIP or foreign postal code <b>Quantico, VA 22134</b>		4 Federal income tax withheld \$				
PSE's name and telephone number		5a January \$ <b>20000.00</b>		5b February \$ <b>20000.00</b>		
Account number (see instructions)		5c March \$ <b>20000.00</b>		5d April \$ <b>20000.00</b>		
		5e May \$ <b>20000.00</b>		5f June \$ <b>20000.00</b>		
		5g July \$ <b>20000.00</b>		5h August \$ <b>20000.00</b>		
		5i September \$ <b>20000.00</b>		5j October \$ <b>20000.00</b>		
		5k November \$ <b>20000.00</b>		5l December \$ <b>20000.00</b>		
		6 State		7 State identification no.		
				8 State income tax withheld \$		

Form **1099-K** (Rev. 3-2024)
 (Keep for your records)

[www.irs.gov/Form1099K](https://www.irs.gov/Form1099K)

Department of the Treasury - Internal Revenue Service

(Keep for your records)

[www.irs.gov/Form1099K](http://www.irs.gov/Form1099K)

Department of the Treasury - Internal Revenue Service

Do Not Staple 6969

Form <b>1096</b>		<b>Annual Summary and Transmittal of U.S. Information Returns</b>										OMB No. 1545-0108  <b>2024</b>					
Department of the Treasury Internal Revenue Service																	
FILER'S name  <b>Penelope Garcia, Nominee</b>  Street address (including room or suite number)  <b>1234 Range Rd</b>  City or town, state or province, country, and ZIP or foreign postal code  <b>Quantico, VA 22134</b>																	
Name of person to contact <b>Penelope Garcia</b>							Telephone number <b>555-005-2024</b>							<b>For Official Use Only</b> <div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div>			
Email address <b>nominee20231099k@gmail.com</b>							Fax number <b>555-346-2137</b>										
1 Employer identification number <b>37-1334247</b>		2 Social security number		3 Total number of forms <b>1</b>				4 Federal income tax withheld <b>\$</b>				5 Total amount reported with this Form 1096 <b>\$ 240000.00</b>					
6 Enter an "X" in only one box below to indicate the type of form being filed.																	
W-2G 32	1097-BTC 50	1098 81	1098-C 78	1098-E 84	1098-F 03	1098-Q 74	1098-T 83	1099-A 80	1099-B 79	1099-C 85	1099-CAP 73		1099-DIV 91	1099-G 86	1099-INT 92	1099-K 10	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
1099-LS 16	1099-LTC 93	1099-MISC 95	1099-NEC 71	1099-OID 96	1099-PATR 97	1099-Q 31	1099-QA 1A	1099-R 98	1099-S 75	1099-SA 94	1099-SB 43	3921 25	3922 26	5498 28	5498-ESA 72	5498-QA 2A	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5498-SA 27																	
<input type="checkbox"/>																	

**Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.  
Send this form, with the copies of the form checked in box 6, to the IRS in a flat mailer (not folded).**

Under penalties of perjury, I declare that I have examined this return and accompanying documents and, to the best of my knowledge and belief, they are true, correct, and complete.

**Signature**

**Title** FILER

Date

**Crowdfunding** is a method of soliciting funds from a large group of people through websites. The contributions may fund businesses, be charitable donations, or be gifts. The money raised may be solicited by crowdfunding organizers on behalf of other people or businesses. Alternatively, crowdfunding or social fundraisers may establish crowdfunding campaigns to raise money for themselves or their businesses.

### **INCOME RECOGNITION**

A person receiving property as a **gift** through a crowdfunding campaign or through any event does not include the amount of the gift in their gross income. A crowdfunding organizer who **solicits donations** on behalf of others does not include monetary distributions in their gross income if the organizer distributes the money raised to the subject of the campaign.

**Note.** It can be inferred that an organizer who does not distribute the money raised to the subject of the campaign must include the donations in their income. Because the income is acquired through fraud, the organizer could be subject to criminal prosecution.

A **donor** who contributes to a crowdfunding campaign with “detached and disinterested generosity” and who does not receive or expect to receive anything in return may be able to treat the amounts as gifts which may be excluded from the gross income for the person or business for which the campaign is organized. However, contributions made by donors without detached and disinterested generosity may not be gifts.

An **employer** that contributes to, or for the benefit of, an employee, generally includes the contributions in the gross income of the employee.

### **CHARITABLE DEDUCTION<sup>24</sup>**

To be deductible, charitable gifts must meet the following two criteria.

1. Made to **qualified charitable organizations<sup>25</sup>**
2. Do not benefit any particular individual or organization

**Example 2.** Kara’s house burns down in a cooking accident. She sets up a crowdfunding campaign to raise funds to find alternative living arrangements and to replace her clothes and other personal items. Her friend Drew donates \$500 to Kara’s campaign. Drew cannot claim a charitable deduction on his return because Kara is not a qualified charitable organization.

**Example 3.** Ronnie’s children attend Main Town Elementary School. The school’s parent-teacher organization (PTO), an IRC §501(c)(3) qualified charitable organization, sets up a crowdfunding campaign to raise money for students to attend space camp during the summer. Ronnie donates \$50. Because the PTO is a qualified charitable organization, Ronnie can deduct his contribution, subject to his itemized deduction limitations.

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<sup>23</sup> *Money received through “crowdfunding” may be taxable; taxpayers should understand their obligations and the benefits of good recordkeeping.* Jan. 31, 2023. IRS. [[www.irs.gov/newsroom/money-received-through-crowdfunding-may-be-taxable-taxpayers-should-understand-their-obligations-and-the-benefits-of-good-recordkeeping](https://www.irs.gov/newsroom/money-received-through-crowdfunding-may-be-taxable-taxpayers-should-understand-their-obligations-and-the-benefits-of-good-recordkeeping)] Accessed on Dec. 31, 2023.

<sup>24</sup> IRC §170(c).

<sup>25</sup> Generally defined in IRC §501(c)(3).



## FORM 1099-K REPORTING

A recipient of more than \$600 from certain crowdfunding campaigns, regardless of the number of transactions, may receive a Form 1099-K related to the fundraiser. If the crowdfunding website uses a third-party processor, the company issuing the Form 1099-K may not be the same company as the website.

Only campaigns which reward contributors with goods or services in exchange for their donations are subject to reporting. All others are exempt.

**Example 4.** Shelly's friend Howard travels out of state for medical care and needs help paying for the trip. Shelly starts an online fundraising campaign on his behalf. Contributors do not receive anything in return for their donations. Shelly receives the money from the processor and uses it to fund Howard's travel.

The processor is not required to issue her a Form 1099-K. Shelly does not include the donations she collects in her income.

**Example 5.** Use the same facts as **Example 4**, except that Howard raises funds for his medical care by starting a fundraiser on his favorite social networking site. He promises everyone who contributes a personalized gift. Because the contributors are promised a future benefit, the payment processor is required to issue him a Form 1099-K.

**Example 6.** Use the same facts as **Example 4**. Howard's employer, BBT, Inc., donates \$1,000 to Shelly's crowdfunding campaign. BBT includes the \$1,000 contribution in Howard's gross income reported on his Form W-2, *Wage and Tax Statement*.

If BBT donated the \$1,000 to Howard's crowdfunding fundraiser in **Example 5**, the contribution would still be included in Howard's gross income. Because Howard is not a qualified charitable organization, BBT may not deduct the donation as a charitable contribution.

## GAMBLING ACTIVITIES

In 2018, the Supreme Court's decision in *Murphy v. National Collegiate Athletic Association* opened the door for legalized sports gambling across the country.<sup>26</sup> In 2022, commercial gaming revenue in the United States reached \$60.4 billion, which includes \$7.2 billion in sports betting, an increase of 73% from 2021, and \$5 billion in online gambling, an increase of 35% from 2021.<sup>27</sup> Gambling income is considered taxable income and includes winnings from the following.<sup>28</sup>

- Lotteries
- Raffles
- Horse races
- Casinos
- Fantasy sports
- Online sports betting sites (e.g., DraftKings and FanDuel)

<sup>26</sup> *Murphy v. National Collegiate Athletic Association*, No. 16-476, 584 U.S. 453 (2018).

<sup>27</sup> *Commercial Gaming Revenue Tops \$60B, Breaking Annual Record For Second Consecutive Year*. Feb. 15, 2023. American Gaming Association. [www.americangaming.org/new/2022-commercial-gaming-revenue-tops-60b-breaking-annual-record-for-second-consecutive-year] Accessed on Feb. 13, 2024.

<sup>28</sup> IRS Pub. 525, *Taxable and Nontaxable Income; Topic no. 419, Gambling income and losses*. Jan. 30, 2024. IRS. [www.irs.gov/taxtopics/tc419] Accessed on Feb. 14, 2024; Ltr. Rul. 202042015 (Oct. 16, 2020).

Gambling winnings are required to be reported to the IRS in the following circumstances.<sup>29</sup>

1. Bingo or slot machine winnings (not reduced by the wager) of \$1,200 or more
2. Keno game winnings (reduced by the wager) of \$1,500 or more
3. Poker winnings (reduced by the wager or buy-in) of more than \$5,000
4. Other winnings that are \$600 or more and at least 300 times the amount of the wager (the payor may opt to reduce the reported winnings by the wager)
5. The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding)

Gambling activities are generally treated as either recreational<sup>30</sup> or a business venture.<sup>31</sup> Regardless of this differentiation of nature, all types of betting and wagering can generate taxable income. **Gambling** winnings are reported by the payor to the IRS on Form W-2G, *Certain Gambling Winnings*. Winnings from **games of skill** are reported on Form 1099-MISC.<sup>32</sup> Taxpayers must report income from any gambling activities even if they do not receive a report from the source of the winnings (i.e., casinos or betting sites).

**Note.** Winnings from sweepstakes are reported on either Form 1099-MISC or Form W-2G depending on whether the contest contains a gambling component. Winnings from sweepstakes not involving a wager are reported on Form 1099-MISC, while winnings from sweepstakes involving a wager are reported on Form W-2G.<sup>33</sup>

If taxpayers receive the payment for their winnings from a TPSO or a PSE such as Venmo and PayPal, the taxpayer may receive a Form 1099-K reporting the amount of the payment. Therefore, it is possible for a taxpayer to receive Form 1099-K in addition to Form W-2G or Form 1099-MISC for the same winnings. Taxpayers and their practitioners should be mindful of such instances to avoid reporting duplicate items of income on a tax return.



### Practitioner Planning Tip

Practitioners should include a question about client gambling activity on their organizer. Additionally, the existence of one type of tax document reporting wagering income should prompt a practitioner to inquire if the taxpayer received any additional winnings via other means. Note that winnings include both legal and illegal gambling. Such discussions, inquiries, and the taxpayer's responses should be well documented.

<sup>29</sup> Instructions for Form W-2G.

<sup>30</sup> *Topic no. 419, Gambling income and losses*. Jan. 30, 2024. IRS. [www.irs.gov/taxtopics/tc419] Accessed on Mar. 26, 2024.

<sup>31</sup> *Comm'r v. Groetzinger*, 480 U.S. 23 (1987).

<sup>32</sup> Ltr. Rul. 200532025 (May 3, 2005); Instructions for Form 1099-MISC.

<sup>33</sup> Instructions for Forms 1099-MISC and 1099-NEC.

**Example 7.** Kyle enjoys betting on his favorite football team through GamblingGizmo, an app on his phone. He links his GamblingGizmo account with his PayPal account to fund his bets and to receive his winnings. At the end of the year, Kyle has total winnings of \$1,000 and total losses of \$3,000.

As a TPSO, PayPal sends Kyle a Form 1099-K reporting the \$1,000 of winnings.

**Example 8.** Kyle, from **Example 7**, also places a longshot bet on his football team at a casino while on vacation in Las Vegas. Miraculously, he wins the bet, and the casino sends Kyle a Form W2-G reporting the winnings.

## WITHHOLDING

Generally, gambling organizations will withhold federal income taxes for winnings totaling \$5,000 or more.<sup>34</sup> Some exceptions apply to this treatment. For example, gambling winnings from bingo games or slot machines generally are not subject to income tax withholding.<sup>35</sup> However, in instances where the winner does not provide the payor with their social security number (SSN), the payor may have to withhold a flat 24% of the winnings for federal income tax.<sup>36</sup> This rule also applies to general gambling winnings in addition to bingo game and slot machine winnings.<sup>37</sup>



### Practitioner Planning Tip

Practitioners should consider quarterly check-ins with taxpayers who traditionally have gambling income to calculate appropriate estimated payments to avoid underpayment penalties. For more information on estimates, see the 2023 *University of Illinois Federal Tax Workbook*, Chapter 9: Individual Taxpayer Issues.

## REPORTING INCOME AND EXPENSES

Properly reporting gambling winnings and any related deductible expenses starts with determining if the wagering activity rises to the level of being a trade or business. The distinction between recreational winnings and business winnings is important because it determines how the income is taxed and if any related expenses are deductible.

The classification is based on the facts and circumstances of each situation. While there is no bright line test, the Supreme Court established the following standard for what constitutes a trade or business with respect to gambling activities.<sup>38</sup>

1. The taxpayer must be involved in the activity with continuity and regularity, **and**
2. The taxpayer's primary purpose for the activity must be for income or profit.

Because all gamblers intend to make a profit, the classification of their gambling winnings depends upon the continuity and regularity of their activities. The Court ruled that when gambling is pursued full-time, in good faith, and with regularity to produce income for a livelihood, it is considered a trade or business. Gamblers who make large-scale efforts to earn income that requires skill are likely not merely engaged in gambling as a hobby.

<sup>34</sup> Treas. Reg. §31.3402(q)-1(b).

<sup>35</sup> Treas. Reg. §31.3402(q)-1(a)(2).

<sup>36</sup> IRS Pub. 505, *Tax Withholding and Estimated Tax*.

<sup>37</sup> Ibid.

<sup>38</sup> *Comm'r v. Groetzinger*, 480 U.S. 23 (1987).

In determining whether a gambler is a professional engaged in a trade or business, courts hold taxpayers to a much higher standard than for nongambling trades or businesses. The following are some principles derived from cases that have dealt with the issue.

- To rise to the level of professional gambling, the gambling activity should be the taxpayer's full-time occupation. If the taxpayer has another occupation, gambling is generally not seen as being full-time unless the other occupation is part-time, and the amount of time devoted to gambling is significantly more than the time devoted to the other occupation.<sup>39</sup>
- If the taxpayer has significant income from sources other than gambling, courts view the taxpayer as not earning a livelihood from gambling. Because most gambling cases involve losses in excess of winnings, it is difficult for a taxpayer to win on this point. Therefore, nongambling sources of income should be minimal for the taxpayer to be considered a professional gambler.<sup>40</sup>
- Frequency and regularity of gambling activities are important. Taxpayers who gamble occasionally, even if they do so frequently, are not engaged in the activity with the requisite regularity to be considered professional gamblers.<sup>41</sup>
- Courts often apply hobby loss factors under IRC §183 in determining whether a taxpayer is in the trade or business of gambling. The court's analysis includes such factors as adequacy of recordkeeping, whether the taxpayer has conducted proper research into the gambling activity, and whether the taxpayer sought professional advice, among others.<sup>42</sup>

If a taxpayer is in the **business of gambling**, the income is reported on Schedule C, *Profit or Loss From Business*. Any allowable losses and expenses are deductible on the schedule up to the amount of income received.<sup>43</sup> Because professional gamblers report gambling activities on Schedule C, all expenses related to the activity are deductible in determining adjusted gross income (AGI), not just their wagers. This can actually create a loss from the gambling activity because only the wager portion is subject to the winnings limitation. However, for tax years 2018 through 2025, expenses **in excess** of gambling winnings are not deductible even if the activity is operated as a business.<sup>44</sup> Furthermore, net profits from a wagering business are subject to SE taxes.<sup>45</sup>

**Note.** For more information on qualifying gambling activities as businesses, see page 112 of the 2017 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 2: Individual Taxpayer Issues. This can be found at [uofi.tax/arc](https://taxschool.illinois.edu/taxbookarchive) [taxschool.illinois.edu/taxbookarchive].

<sup>39</sup> See, e.g., *Moore v. Comm'r*, TC Memo 2011-173 (Jul. 18, 2011).

<sup>40</sup> Ibid.

<sup>41</sup> See, e.g., *Free-Pacheco v. U.S.*, 117 Fed. Cl. 228 (2014).

<sup>42</sup> See Treas. Reg. §1.183-2(b); see also *Merkin v. Comm'r*, TC Memo 2008-146 (Jun. 5, 2008).

<sup>43</sup> See, e.g., *Boyd v. U.S.*, 762 F.2d 1369 (9th Cir. 1985).

<sup>44</sup> IRC §165(d).

<sup>45</sup> *Topic Number 554, Self-employment tax*. Feb. 12, 2024. IRS. [www.irs.gov/taxtopics/tc554] Accessed on Mar. 28, 2024; *Comm'r v. Grotzinger*, 480 U.S. 23 (1987).

The income from **nonbusiness gambling** is reported on Form 1040, Schedule 1, as other income on line 8b. Losses are reported on Schedule A, *Itemized Deductions*, as other itemized deductions and are not subject to the 2%-of-AGI limitation and are not preferences in determining alternative minimum tax income (AMTI). Deductible gambling losses and expenses are limited to gambling income for federal income tax purposes.<sup>46</sup> Some states, such as Illinois, do not allow state income tax deductions for gambling losses even to the extent of winnings.<sup>47</sup>

**Caution.** The treatment of itemized deductions is one of the issues that could be impacted by the expiration of the Tax Cuts and Jobs Act (TCJA) at the end of 2025. For additional information, see the 2024 *University of Illinois Federal Tax Workbook*, Chapter 12: Planning for the Sunset of the TCJA.

**Note.** Participation in such Internet activities as daily fantasy sports may qualify as gambling, which permits taxpayers to deduct costs against earnings if the taxpayer itemizes. However, if the winnings from such activities are considered **prizes** for games of skill, the losses and expenses are treated as miscellaneous itemized deductions subject to the 2% floor, which are suspended until tax year 2026.<sup>48</sup>

To determine the amount of winnings and losses incurred each year, taxpayers must keep appropriate records. Such records include the following information.<sup>49</sup>

- Date and type of specific wager or wagering activity
- Name and address of gambling establishment
- Names of other persons (if any) present with taxpayer at gambling establishment
- Amount(s) won or lost

**Note.** IRS Notice 2015-21 provides a safe harbor for determining winnings and losses from slot machine play.<sup>50</sup> This safe harbor applies only to slot machines and does not permit gains or losses from separate sessions to be netted against each other. Thus, a taxpayer who participates in both slot machine play and table games at a casino cannot net the two activities into a single session of play.

Gamblers often do not keep complete records of their gaming wins and losses. In some circumstances, the court estimates the amount allowable when a taxpayer establishes that they paid or incurred a deductible expense but does not establish the exact amount.<sup>51</sup> Courts may recognize evidence of losses, such as bank and brokerage records showing the taxpayer's casino-related activities,<sup>52</sup> but proper documentation of gambling activities prevent taxpayers from having to present their evidence in court.

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<sup>46</sup> IRC §165(d).

<sup>47</sup> *Tax issues for professional gamblers*. Nevius, Alistair M. Oct. 1, 2016. Journal of Accountancy. [www.journalofaccountancy.com/issues/2016/oct/taxes-for-gamblers.html] Accessed on Mar. 26, 2024.

<sup>48</sup> IRC §§67(b) and (g).

<sup>49</sup> IRS Pub. 529, *Miscellaneous Deductions*.

<sup>50</sup> IRS Notice 2015-21, 2015-12 IRB 765.

<sup>51</sup> See *Cohan v. Comm'r*, 39 F.2d 540 (2d Cir. 1930).

<sup>52</sup> *John M. Coleman v. Comm'r*, TC Memo 2020-146 (Oct. 22, 2020).



## TICKET RESELLERS

3

People who sell or resell tickets to events may receive a Form 1099-K for sales paid through TPSOs and PSEs, such as StubHub or Ticketmaster. Proper reporting of such receipts and the deductibility of associated expenses on a tax return depends upon the facts and circumstances surrounding the seller's profit motive and the nature of the activity.

A purchaser who later sells tickets may be considered to be in the trade or business of ticket reselling. An activity may rise to the level of a trade or business when an individual conducts the activity continually and with regularity to earn income or realize a profit.<sup>53</sup> Instead of straight line tests or quantified criteria, regulations state that facts and circumstances surrounding a taxpayer's situation drives the determination of a profit motive.<sup>54</sup> Such factors indicating a taxpayer's profit objective include the following.<sup>55</sup>

- The manner in which a taxpayer engages in the activity, including whether they maintain books or records, or conduct the activity in a similar nature to other profitable activities
- The taxpayer's reliance on their own specialized knowledge or a third party's expertise in conducting the activity
- The amount of time and effort the taxpayer exerts in their involvement in the activity
- The taxpayer's intention of earning a profit, whether it be during the regular course of participating in the activity or at the conclusion or termination of the activity
- The taxpayer's historical involvement in similar activities and the profitability of such activities
- The taxpayer's historical profitability or incursion of losses in the activity
- The taxpayer's financial health
- The presence of a personal or recreational component in the activity

Depending on the facts and circumstances, selling several tickets at a profit over a period of months may meet the attributes of conducting a trade or business. In those situations, the taxpayer should report the activity on Schedule C.<sup>56</sup>

If the facts and circumstances surrounding the taxpayer's ticket reselling activities do not indicate the taxpayer is doing so in the capacity of conducting a trade or business, the tickets are capital assets under IRC §1221. If sold at a gain, the profit from the ticket sale is taxable as short-term or long-term capital gain, based on the holding period. The taxpayer uses Form 8949 to report such gains. Sellers should mark box C to indicate the transaction was not reported to the taxpayer on Form 1099-B, *Proceeds From Broker and Barter Exchange Transactions*. Details of the transaction are reported in the list box of line 1 in each part. Sellers then must report the total of the transactions on Schedule D. However, if the taxpayer sells the ticket at a loss, it is not deductible.<sup>57</sup>

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<sup>53</sup> *Comm'r v. Groetzinger*, 480 U.S. 23 (1987).

<sup>54</sup> Treas. Reg. §1.183-2(a).

<sup>55</sup> Treas. Reg. §1.183-2(b).

<sup>56</sup> Instructions for Schedule C.

<sup>57</sup> IRC §165.

**Example 9.** Glen believes that his favorite sportsball team is going to make it to the Grand Super World Finals this year. Every year, he purchases 10 tickets for the potential championship event before the game season starts.

In 2023, his foresight paid off. Glen paid \$200 per ticket and told his family to save the dates. His family made other plans, however, and he was holding nine extra tickets to the biggest game of the year. He sold the extra tickets for \$1,000 each just before the final game of the year. Glen reported the sale on his 2023 Form 8949 and Schedule D as shown next.

Form <b>8949</b> Department of the Treasury Internal Revenue Service	<b>Sales and Other Dispositions of Capital Assets</b> File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D. Go to <a href="https://www.irs.gov/Form8949">www.irs.gov/Form8949</a> for instructions and the latest information.	OMB No. 1545-0074 <div style="font-size: 2em; font-weight: bold;">2023</div> Attachment Sequence No. <b>12A</b>					
Name(s) shown on return <b>Glen Fan</b>		Social security number or taxpayer identification number <b>***-**-9293</b>					
<p><i>Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.</i></p>							
<p><b>Part I Short-Term.</b> Transactions involving capital assets you held 1 year or less are generally short-term (see instructions). For long-term transactions, see page 2.</p> <p><b>Note:</b> You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 1a; you aren't required to report these transactions on Form 8949 (see instructions).</p>							
<p><b>You must check Box A, B, or C below. Check only one box.</b> If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.</p> <p> <input type="checkbox"/> <b>(A)</b> Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see <b>Note</b> above)  <input type="checkbox"/> <b>(B)</b> Short-term transactions reported on Form(s) 1099-B showing basis <b>wasn't</b> reported to the IRS  <input checked="" type="checkbox"/> <b>(C)</b> Short-term transactions not reported to you on Form 1099-B         </p>							
<b>1</b>	<b>(a)</b> Description of property (Example: 100 sh. XYZ Co.)	<b>(b)</b> Date acquired (Mo., day, yr.)	<b>(c)</b> Date sold or disposed of (Mo., day, yr.)	<b>(d)</b> Proceeds (sales price) (see instructions)	<b>(e)</b> Cost or other basis See the <b>Note</b> below and see <i>Column (e)</i> in the separate instructions.	<b>Adjustment, if any, to gain or loss</b> If you enter an amount in column (g), enter a code in column (f). <b>See the separate instructions.</b>	<b>(h)</b> <b>Gain or (loss)</b> Subtract column (e) from column (d) and combine the result with column (g).
	<b>9 Sports Event Tickets</b>	<b>02/24/23</b>	<b>11/11/23</b>	<b>9,000</b>	<b>1,800</b>		<b>7,200</b>

## For Example 9

### SCHEDULE D (Form 1040)

Department of the Treasury  
Internal Revenue Service

### Capital Gains and Losses

Attach to Form 1040, 1040-SR, or 1040-NR.  
Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.  
Go to [www.irs.gov/ScheduleD](http://www.irs.gov/ScheduleD) for instructions and the latest information.

OMB No. 1545-0074

**2023**

Attachment  
Sequence No. **12**

Name(s) shown on return

**Glen Fan**

Your social security number

\*\*\*-\*\*-9293

Did you dispose of any investment(s) in a qualified opportunity fund during the tax year? ☐ Yes ☒ No

If "Yes," attach Form 8949 and see its instructions for additional requirements for reporting your gain or loss.

#### Part I Short-Term Capital Gains and Losses—Generally Assets Held One Year or Less (see instructions)

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
<b>1a</b> Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b .				
<b>1b</b> Totals for all transactions reported on Form(s) 8949 with <b>Box A</b> checked . . . . .				
<b>2</b> Totals for all transactions reported on Form(s) 8949 with <b>Box B</b> checked . . . . .				
<b>3</b> Totals for all transactions reported on Form(s) 8949 with <b>Box C</b> checked . . . . .	<b>9,000</b>	<b>1,800</b>		<b>7,200</b>
<b>4</b> Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 . . . . .			<b>4</b>	
<b>5</b> Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 . . . . .			<b>5</b>	
<b>6</b> Short-term capital loss carryover. Enter the amount, if any, from line 8 of your <b>Capital Loss Carryover Worksheet</b> in the instructions . . . . .			<b>6</b>	( )
<b>7</b> <b>Net short-term capital gain or (loss).</b> Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on the back . . . . .			<b>7</b>	<b>7,200</b>

The IRS provides taxpayers with two methods to report sales that result in non-deductible losses.

1. Using Form 8949 and adjusting the loss<sup>58</sup>
2. Using Schedule 1, part I, to report the income and part II to deduct the cost<sup>59</sup>

**Example 10.** Dyanne, the eternal optimist, believes her team will do better each and every year. Early in 2023, she purchased 10 tickets to her team's possible big game for \$1,000 each. Later in the year (before all hope was lost), she sold nine of the tickets for \$500 each on a social media platform's marketplace.

Dyanne lives in a state with lower mandatory reporting thresholds than the federal thresholds, and the \$4,500 total exceeds that threshold. The social media platform sends Dyanne a Form 1099-K reporting the income. She reports the transactions on her 2023 return as follows.

**Note.** Code L in column 1(f) reflects that the adjustment in column 1(g) is for nondeductible losses.

<sup>58</sup> Instructions for Form 8949.

<sup>59</sup> *Frequently Asked Questions about Form 1099-K*. Dec. 2022. IRS. [[www.irs.gov/pub/taxpros/fs-2022-41.pdf](http://www.irs.gov/pub/taxpros/fs-2022-41.pdf)] Accessed on Feb. 7, 2024.

## For Example 10

Form <b>8949</b> Department of the Treasury Internal Revenue Service	<b>Sales and Other Dispositions of Capital Assets</b> File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D. Go to <a href="http://www.irs.gov/Form8949">www.irs.gov/Form8949</a> for instructions and the latest information.	OMB No. 1545-0074 <div style="font-size: 2em; font-weight: bold;">2023</div> Attachment Sequence No. <b>12A</b>
Name(s) shown on return <b>Dyanne DeVries</b>		Social security number or taxpayer identification number <b>***-**-0234</b>

Before you check Box A, B, or C below, see whether you received any Form(s) 1099-B or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-B. Either will show whether your basis (usually your cost) was reported to the IRS by your broker and may even tell you which box to check.

**Part I Short-Term.** Transactions involving capital assets you held 1 year or less are generally short-term (see instructions). For long-term transactions, see page 2.

**Note:** You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the totals directly on Schedule D, line 1a; you aren't required to report these transactions on Form 8949 (see instructions).

**You must check Box A, B, or C below. Check only one box.** If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

- ☐ **(A)** Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see **Note** above)  
☐ **(B)** Short-term transactions reported on Form(s) 1099-B showing basis **wasn't** reported to the IRS  
☒ **(C)** Short-term transactions not reported to you on Form 1099-B

1	(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold or disposed of (Mo., day, yr.)	(d) Proceeds (sales price) (see instructions)	(e) Cost or other basis See the <b>Note</b> below and see <i>Column (e)</i> in the separate instructions.	Adjustment, if any, to gain or loss If you enter an amount in column (g), enter a code in column (f). See the separate instructions.		(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g).
						(f) Code(s) from instructions	(g) Amount of adjustment	
	<b>9 Sports Event Tickets</b>	<b>02/24/23</b>	<b>12/01/23</b>	<b>4,500</b>	<b>9,000</b>	<b>L</b>	<b>4,500</b>	<b>0</b>

**Example 11.** Taylor and Tyler are best friends who want to attend the sure-to-be sold-out concert of the year together. Tyler purchases the tickets for the both of them and Taylor swiftly uses Venmo to pay Tyler for her ticket. Neither Taylor nor Tyler is issued a Form 1099-K.

**Note.** As a result of the Form 1099-K filing requirements, ticket sellers may request additional information from purchasers. For example, Ticketmaster requires individuals and entities that are considered U.S. persons who sell tickets on the Ticketmaster marketplace to provide their legal name, address, phone number, and tax identification number.<sup>60</sup>

<sup>60</sup> 2024 U.S. Tax Law Updates You Need to Know. Jan. 18, 2024. Ticketmaster. [business.ticketmaster.com/business-solutions/2024-u-s-tax-law-updates-you-need-to-know] Accessed on Feb. 7, 2024.

In 2021, the National Collegiate Athletic Association (NCAA) approved a name, image, and likeness (NIL) policy that permits student-athletes to make a profit off their NIL without impacting their NCAA eligibility.<sup>62</sup> Such profit, depending on what the payment was for and how the payment was made, is reported to the IRS on various 1099 forms. A student-athlete who earns \$600 or more in **royalties** from selling their NIL may receive a Form 1099-MISC.<sup>63</sup> A student-athlete who earns \$600 or more by providing a **service** associated with their NIL may receive Form 1099-NEC.<sup>64</sup> Student-athletes who **receive payment from a TPSO** from selling their NIL may receive a Form 1099-K. Consequently, a student-athlete who receives more than \$600 paid by a TPSO from selling their NIL may receive both a Form 1099-NEC or Form 1099-MISC and a Form 1099-K. In rare circumstances, a student-athlete receives a Form W-2 if they are considered an employee.

All income from NIL activities is reportable income, including non-monetary items like virtual currencies, nonfungible tokens (NFT), paid vacations, etc. Income from NIL activities is reported on Schedule C and is subject to SE tax. NIL activities include the following.

- Guest appearances
- Autograph signings
- Sponsorships
- Endorsements
- Apparel sales
- Corporate partnerships
- Charitable appearances
- Product or service promotions

**Note.** Income from **licensing one's image** when the services provided are immaterial to the agreement is passive income, not self-employment.<sup>65</sup> Accordingly, such income is likely reported as royalties on Schedule E, *Supplemental Income and Loss*.

Student-athletes are permitted to offset their NIL income with any ordinary, necessary, and reasonable expenses related to their NIL income. This could include mileage, travel, office expenses, cell phone expenses, professional fees such as legal, accounting, marketing, or agency fees.

<sup>61</sup> *Name, Image, and Likeness*. Jan. 4, 2024. Taxpayer Advocate Service. [www.taxpayeradvocate.irs.gov/get-help/general/nil] Accessed on Jan. 9, 2024; Messina, Marena and Messina, Frank. (2022, Jul.) A Primer on the Income Tax Consequences of the NCAA's Name, Image and Likeness (NIL) Earnings for College Athletes. *Journal of Athlete Development and Experience*. Vol. 4: Iss. 2, Article 5.

<sup>62</sup> AM 2023-004 (Jun. 9, 2023).

<sup>63</sup> *Student Athletes Need to Know the Potential Tax Implications of the Name, Image, Likeness Rules in College Football*. Hornbrook, Carlos J. Jun. 11, 2023. American Bar Association. [www.americanbar.org/groups/taxation/publications/abataximes\_home/23spr/23spr-prp-hornbrook-nil-rules] Accessed on Apr. 3, 2024.

<sup>64</sup> Ibid.

<sup>65</sup> *Goosen v. Comm'r*, 136 TC 547 (2011).





## Practitioner Planning Tip

Athletics are specified service trades or businesses for purposes of the qualified business income deduction per IRC §199A. However, the potential expiration of the TCJA at the end of 2025 may impact the qualified business income adjustment for years beginning in 2026. Tax practitioners should keep this possibility in mind when engaging in tax planning for their student-athlete clients. For more information, see the 2024 *University of Illinois Federal Tax Workbook*, Chapter 12: Planning for the Sunset of the TCJA.

Net NIL income of \$400 or more is subject to SE tax, calculated on Schedule SE, *Self-Employment Tax*.<sup>66</sup> Consequently, student-athletes who receive income totaling less than the tax year's applicable standard deduction but receive more than \$400 of NIL income do not have an income tax liability but are still responsible for payment of the SE tax.

**Example 12.** Blaire, 22, is a soccer player at College State University (CSU). Water Break, a local beverage establishment that serves CSU students, pays Blaire to enjoy some beverages on a Friday night. Water Break pays Blaire \$100 per appearance, plus the cost of any beverages she consumes. During 2023, Blaire earns \$1,200 in cash and products. Water Break pays Blaire through CashMo, a TPSO. As such, Blaire receives a Form 1099-K in January 2024.

The \$1,200 of earned income is below Blaire's standard deduction, so she does not have an income tax liability. However, she is responsible for SE tax.

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<sup>66</sup> See Schedule SE, *Self-Employment Tax*.

## DEPENDENCY ISSUES

Tax preparers must determine whether a student-athlete with NIL income is going to claim themselves or whether their parent can claim the student-athlete as a dependent. Student-athletes with gross income of \$4,700 or more usually cannot be claimed as a dependent unless they are a **qualifying child**.<sup>67</sup> IRS Pub. 501, *Dependents, Standard Deduction, and Filing Information*, summarizes the rules for claiming a dependent.



*This table is only an overview of the rules. For details, see the rest of this publication.*

- You can't claim any dependents if you, or your spouse if filing jointly, could be claimed as a dependent by another taxpayer, unless that taxpayer files a return only to claim a refund of withheld income tax or estimated tax paid.
- You can't claim a married person who files a joint return as a dependent unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid.
- You can't claim a person as a dependent unless that person is a U.S. citizen, a U.S. resident alien, a U.S. national, or a resident of Canada or Mexico.<sup>1</sup>
- You can't claim a person as a dependent unless that person is your **qualifying child** or **qualifying relative**.

Tests To Be a Qualifying Child	Tests To Be a Qualifying Relative
<ol style="list-style-type: none"> <li>1. The child must be your son, daughter, stepchild, foster child, brother, sister, half brother, half sister, stepbrother, or stepsister, or a descendant of any of them.</li> <li>2. The child must be (a) under age 19 at the end of the year and younger than you (or your spouse if filing jointly); (b) under age 24 at the end of the year, a student, and younger than you (or your spouse if filing jointly); or (c) any age if permanently and totally disabled.</li> <li>3. The child must have lived with you for more than half of the year.<sup>2</sup></li> <li>4. The child must not have provided more than half of the child's own support for the year.</li> <li>5. The child must not be filing a joint return for the year (unless that joint return is filed only to claim a refund of withheld income tax or estimated tax paid).</li> </ol> <p>If the child meets the rules to be a qualifying child of more than one person, generally only one person can actually treat the child as a qualifying child. See <i>Qualifying Child of More Than One Person</i>, later, to find out which person is the person entitled to claim the child as a qualifying child.</p>	<ol style="list-style-type: none"> <li>1. The person can't be your qualifying child or the qualifying child of any other taxpayer.</li> <li>2. The person either (a) must be related to you in one of the ways listed under <i>Relatives who don't have to live with you</i>, or (b) must live with you all year as a member of your household<sup>2</sup> (and your relationship must not violate local law).</li> <li>3. The person's gross income for the year must be less than \$4,700.<sup>3</sup></li> <li>4. You must provide more than half of the person's total support for the year.<sup>4</sup></li> </ol>
<p><sup>1</sup> There is an exception for certain adopted children.</p> <p><sup>2</sup> There are exceptions for temporary absences, children who were born or died during the year, children who were adopted or lawfully placed for adoption during the year, children who are eligible foster children placed during the year, children of divorced or separated parents (or parents who live apart), and kidnapped children.</p> <p><sup>3</sup> There is an exception if the person is disabled and has income from a sheltered workshop.</p> <p><sup>4</sup> There are exceptions for multiple support agreements, children of divorced or separated parents (or parents who live apart), and kidnapped children.</p>	

Parents cannot claim their student-athlete child as a dependent if the student-athlete provides more than half of their own total support for the year. Additionally, parents and student-athletes should be aware of the age requirements for dependency as shown in the preceding table when determining dependency status.

<sup>67</sup> See IRS Pub. 501, *Dependents, Standard Deduction, and Filing Information*.

If the parents cannot claim the student-athlete as a dependent, the student-athlete is able to receive the entire standard deduction to offset their NIL income, which would lower their potential tax obligation. Regardless, the student-athlete may need to file a tax return even if they do not owe income tax because they may owe SE taxes, as discussed previously.

**Note.** There are other considerations parents and their children should consider when determining whether the parents should claim the student-athlete as a dependent. This includes whether the parents' income is too high to be eligible for education credits or recovery rebates. Additionally, because NIL income is taxable, student-athletes must report the income on their Free Application for Federal Student Aid (FAFSA) which may impact any financial aid they receive. For more information on federal student aid tax strategies, see the 2023 *University of Illinois Federal Tax Workbook*, Chapter 9: Individual Taxpayer Issues.

## COLLECTIVES<sup>68</sup>

Student-athletes may receive assistance from **collectives**, i.e., groups formed to support NIL opportunities for student-athletes. Payments and other forms of compensation from such entities are income to the student-athlete.

**Caution.** Some of these groups are operating as putative non-profit NIL collectives. The IRS Chief Counsel has concluded that such organizations are more likely to be serving the private interests of student-athletes than operating for a purpose that qualifies for non-profit status under §501(c)(3).<sup>69</sup>

## OTHER TAX CONSIDERATIONS

Parents and student-athletes should also consider the impact NIL income has on the kiddie tax.<sup>70</sup> Unearned income during 2024 in excess of \$2,600<sup>71</sup> may be subject to the tax on unearned income of certain children (i.e., kiddie tax). The kiddie tax applies to children under age 18 at the end of the tax year or **fulltime students under age 24 at the end of the tax year who did not have earned income that exceeded half of their own support**. Therefore, a student-athlete with **royalty income** from licensing their NIL has **unearned income** that could subject them to the kiddie tax.<sup>72</sup>

**Note.** Income from nonemployee contract work (e.g., appearances, autograph signings, etc.) is earned income and not subject to the kiddie tax calculation.

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<sup>68</sup> See *Name, Image, and Likeness*. Mar. 7, 2023. Taxpayer Advocate Service. [[www.taxpayeradvocate.irs.gov/get-help/general/nil](https://www.taxpayeradvocate.irs.gov/get-help/general/nil)] Accessed on Feb. 9, 2024; AM 2023-004 (Jun. 9, 2023); *The Long Read: Tax Implications of College Collectives, NIL Deals*. Shaw, Tim. Oct. 6, 2022. Thomson Reuters. [[tax.thomsonreuters.com/news/the-long-read-tax-implications-of-college-collectives-nil-deals](https://tax.thomsonreuters.com/news/the-long-read-tax-implications-of-college-collectives-nil-deals)] Accessed on Mar. 29, 2024.

<sup>69</sup> AM 2023-004 (Jun. 9, 2023).

<sup>70</sup> *Topic no. 553, Tax on a child's investment and other unearned income (Kiddie tax)*. Jan. 12, 2024. IRS. [[www.irs.gov/taxtopics/tc553](https://www.irs.gov/taxtopics/tc553)] Accessed on Feb. 9, 2024.

<sup>71</sup> Rev. Proc. 2023-24, 2023-48 IRB 1287.

<sup>72</sup> *Student Athletes Need to Know the Potential Tax Implications of the Name, Image, Likeness Rules in College Football*. Hornbrook, Carlos. Jan. 11, 2023. American Bar Association. [[www.americanbar.org/groups/taxation/publications/abataxtimes\\_home/23spr/23spr-prp-hornbrook-nil-rules](https://www.americanbar.org/groups/taxation/publications/abataxtimes_home/23spr/23spr-prp-hornbrook-nil-rules)] Accessed on Feb. 9, 2024.

If the student-athlete's only income is from interest and dividends (including capital gain distributions) and totals less than \$13,000 (2024), the parents can elect to include the income on their return.<sup>73</sup>

**Caution.** Student-athletes with NIL income may be surprised to owe taxes on NIL income and should consider if they are required to pay estimated payments. Additionally, student-athletes paid in noncash compensation may find they do not have the cash required to pay their tax liability.

Student-athletes may also have complex state income tax issues. Their resident state is normally where their parents live even when the student leaves that state to play for a university in another state.<sup>74</sup> However, the rules applicable to each state need to be considered when determining where they legally reside. In addition, the student-athlete needs to consider the laws of every state in which they earn income to determine if they have to file returns with those states.

## RESEARCH STUDY PARTICIPANTS

Participants in a research study are often paid for their participation and may also be reimbursed for travel expenses including gas, lodging, and food. Consequently, participants may be issued a Form 1099 for their compensation. The treatment and reporting of income from research study participation for income tax purposes depends on the type of payment the participant received.

### REMUNERATION

Research study participants may receive payment for their participation in the form of remuneration. **Remuneration** is compensation for services rendered and is taxable income to the recipient.<sup>75</sup> Such payment may be issued in the form of cash and cash equivalents including gift cards and bank checks. If a research participant earns \$600 or more from a research provider or company, they will be issued a Form 1099.<sup>76</sup> The participant's facts and circumstances will determine whether they should be issued a Form 1099-MISC or a Form 1099-NEC.

If the research participant's involvement in the research study rises to the level of a trade or business, discussed earlier, the research participant should be issued a Form 1099-NEC if they receive \$600 or more.<sup>77</sup> The research participant reports this income on Schedule C of their Form 1040 and is subject to SE tax. The research participant can deduct expenses they incur in participating in research studies from the income they earn, reporting these expenses on Schedule C.<sup>78</sup>

<sup>73</sup> See Form 8814, *Parents' Election to Report Child's Interest and Dividends*; Rev. Proc. 2023-34, 2023-48 IRB 1287.

<sup>74</sup> *Am I an Illinois resident if I live in Illinois while attending school?* Apr. 27, 2023. IDOR. [tax.illinois.gov/questionsandanswers/answer.708.html] Accessed on Apr. 3, 2024; *First-Time Filer Residency Information: Am I a resident?* Sep. 11, 2022. IDOR. [tax.illinois.gov/individuals/studentdefinitions.html] Accessed on Apr. 3, 2024.

<sup>75</sup> IRC §61(a)(1).

<sup>76</sup> Instructions for Forms 1099-MISC and 1099-NEC.

<sup>77</sup> Ibid.

<sup>78</sup> IRC §162(a).

If the research participant's involvement **does not** rise to the level of a trade or business, the research participant receiving \$600 or more in compensation from a research provider should be issued a Form 1099-MISC.<sup>79</sup> The research participant reports this income on part 1, line 8z of Schedule 1 of their Form 1040. This compensation is not subject to SE tax. The expenses the research participant incurs in participating in research studies constitutes a miscellaneous itemized deduction subject to a 2% of AGI floor.<sup>80</sup> Such itemized deductions are disallowed under the TCJA.<sup>81</sup>

**Caution.** Regardless of whether the research participant was issued a Form 1099, research participants are nonetheless required to report compensation they received from their participation as income on their income tax returns. The appropriate reporting of this income depends on whether their involvement in participating in research activities rises to a trade or business, as discussed previously.<sup>82</sup>

## REIMBURSEMENT

Research study participants may receive reimbursement of out-of-pocket expenses they incur while participating in the study. Such expenses may include travel, transportation, and parking. Research providers should not report the reimbursement of incurred expenses on either Forms 1099-MISC or 1099-NEC<sup>83</sup> and research study participants should not report such payments as income on their income tax returns.<sup>84</sup>

If research providers make payments to research study participants for **estimated payments** of out-of-pocket expenses that the participants have not yet incurred, the treatment of such payments may differ from reimbursements of incurred expenses. Some research providers adopt the same principles of reimbursements and expense allowance arrangements for employees to research study participants.<sup>85</sup> Under these principles, the treatment of advance payments of reimbursed expenses depends on whether the payor makes such payments under an accountable plan.<sup>86</sup> **Accountable plans** require the following.<sup>87</sup>

1. The reimbursed expense must have a business connection.
2. The reimbursed party must substantiate the expenses to the payor within a reasonable period of time.
3. The reimbursed party must return any excess amount of payment exceeding the actual expense to the payor within a reasonable time.

**Note.** For more information on accountable plans, see the 2021 *University of Illinois Federal Tax Workbook*, Volume B, Chapter 6: Small Business Issues. This can be found at [uofi.tax/arc\[taxschool.illinois.edu/taxbookarchive\]](https://uofi.tax/arc[taxschool.illinois.edu/taxbookarchive]).

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<sup>79</sup> Instructions for Forms 1099-MISC and 1099-NEC.

<sup>80</sup> Treas. Reg. §1.212-1(a).

<sup>81</sup> IRC §67(g).

<sup>82</sup> *If You Don't Get Form 1099, Is It Taxable, Will IRS Know? (Hint: 'If A Tree Falls In The Forest...')*. Wood, Robert W. Nov. 22, 2021. Forbes. [www.forbes.com/sites/robertwood/2021/11/22/if-you-dont-get-form-1099-is-it-taxable-will-irs-know-hint-if-a-tree-falls-in-the-forest] Accessed on May 2, 2024.

<sup>83</sup> Instructions for Forms 1099-MISC and 1099-NEC.

<sup>84</sup> IRS Pub. 463, *Travel, Gift, and Car Expenses*.

<sup>85</sup> *Payments to Human Subjects for Participation in Research*. Sep. 10, 2010. Partners Healthcare. [www.partners.org/Assets/Documents/Medical-Research/Clinical-Research/Payments-to-Human-Subjects-for-Participatio-in-Research.pdf] Accessed on May 2, 2024.

<sup>86</sup> Treas. Reg. §1.62-2.

<sup>87</sup> IRS Pub. 463, *Travel, Gift, and Car Expenses*.



If the advance payment is made under an accountable plan, the research provider does not report the reimbursement on Forms 1099-MISC or 1099-NEC and research study participants should not report such payments as income on their income tax returns. Conversely, if the advance payments are not made under an accountable plan, the research provider will report such payments on either Form 1099-MISC or Form 1099-NEC and the research study participant must report the payment as income on their income tax returns.<sup>88</sup>

**Note.** Instead of reimbursing the participant directly, a research provider may instead pay the expense incurred by the participant directly to the vendor. This payment should not reflect compensation or reimbursement to the participant.<sup>89</sup>

**Example 13.** In 2024, Elizabeth participated in a research study for Emerald Goliaths Research, a company specializing in anger management research. Elizabeth incurred and paid \$100 in travel expenses to the testing center where the study was conducted and \$250 for lodging. Emerald Goliaths Research paid Elizabeth \$650 for participating in the study and fully reimbursed her for her travel and lodging expenses after she furnished her receipts, resulting in a total payment of \$1,000 (\$100 travel expense reimbursement + \$250 lodging reimbursement + \$650 remuneration). Elizabeth does not participate in research studies on a continual basis and such activities do not rise to the level of a trade or business for her.

Emerald Goliaths Research issued Elizabeth a Form 1099-MISC for \$650 of remuneration for her participation in the research study in 2024. Because Elizabeth incurred and paid her travel and lodging expenses before receiving reimbursement of those expenses, Emerald Goliaths Research correctly excluded the reimbursement portion of the \$1,000 payment to Elizabeth from the Form 1099-MISC. Elizabeth reported \$650 of income on part 1, line 8z of Schedule 1 for her 2024 Form 1040.

**Example 14.** Use the same facts as **Example 13**, except Emerald Goliaths Research paid Elizabeth advance reimbursement payments of \$150 for travel expenses and \$300 for lodging expenses. Elizabeth did not submit her receipts to Emerald Goliaths Research and she did not pay back the \$100 excess of payment she received (\$150 travel expense advance reimbursement + \$300 lodging advance reimbursement – \$100 travel expense incurred – \$250 lodging expense incurred). Emerald Goliaths Research issued Elizabeth a Form 1099-MISC for \$1,100 (\$150 travel expense advance reimbursement + \$300 lodging advance reimbursement + \$650 remuneration). Elizabeth reports the full \$1,100 as income on part 1, line 8z of Schedule 1 for her 2024 Form 1040.

## GIFTS

Research providers may give gifts to research study participants as an acknowledgement of appreciation. If such gifts are noncash items of nominal value, research providers should not include the gift in reported compensation on Form 1099-MISC or Form 1099-NEC and research study participants should not include the gift as income on their tax returns.<sup>90</sup> However, cash or cash equivalent gifts must be reported on Form 1099-MISC or Form 1099-NEC as compensation and is taxable income to the research study participant.<sup>91</sup>

<sup>88</sup> *Payments to Human Subjects for Participation in Research*. Sep. 10, 2010. Partners Healthcare. [www.partners.org/Assets/Documents/Medical-Research/Clinical-Research/Payments-to-Human-Subjects-for-Participation-in-Research.pdf] Accessed on May 2, 2024.

<sup>89</sup> Ibid.

<sup>90</sup> IRS Pub. 525, *Taxable and Nontaxable Income*.

<sup>91</sup> Ibid.