

## Form 1099-K Guidance

The Infrastructure Act of 2021 changed the Form 1099-K reporting, effective for transactions taking place after December 31, 2021. Form 1099-K is required to be issued if the total transactions taking place during the year reach \$600 or more. This is a change from the prior requirement of \$20,000 and 200 transactions.

But in late December 2022, IRS decided to postpone this requirement one year. Therefore, for calendar year 2022 transactions, instead of using the “\$600 or more” test for issuing Forms 1099-K, the affected companies can continue to use the “\$20,000 or more AND 200 or more transactions” test for issuing Forms 1099-K. The “\$600 or more” provision will apply starting with calendar year 2023 transactions.

Even though IRS postponed the effective date of the “600 or more” provision, many affected companies may still issue use the \$600 or more” provision for issuing Forms 1099-K for 2022. This means there will likely be many more Forms 1099-K issued in January 2023 compared to January 2022.

In late December 2022, IRS released Fact Sheet 2022-41 as Q&A guidance to deal with questions about Form 1099-K. The Fact Sheet has five headings: General, Definitions, Individuals, Reporting, and Filing Form 1099-K. Here are some interesting items we found in this Fact Sheet under the General heading:

Q3 asks – “Is the gain from the sale of a personal item used to compute my taxable income?”

Naturally IRS answers the question by saying the gain is taxable and a loss is not deductible. But IRS goes further and addresses how to report the sale when the taxpayer receives a Form 1099-K. In the case of a gain from the sale of a personal item, it is to be reported on Form 8949. In the case of a loss from the sale of a personal item, the sales price is to be reported on Form 1040, Schedule 1, Part I, line 8z with the words “Form 1099-K Personal Item Sold at a Loss” and the cost, but not more than the sales price, is to be reported on Form 1040, Schedule 1, Part II, line 24z with the words “Form 1099-K Personal Item Sold at a Loss”.

Q4 asks – How do I account for the fees I paid to an online marketplace related to the sale of the personal items?

The answer states all fees (e.g., selling fees, payment processing fees, etc.) associated with the sale should be added to the basis of the items sold.

Q6 asks – “I sold my personal guitar for \$800 on social media platform’s marketplace and I received Form 1099-K. I purchase the guitar several years ago for \$3,000. How do I prove how much I paid if requested by IRS?”

The answer says: “A6. Generally, you should keep accurate records for personal items you may sell. If your records are lost, destroyed, or are not available due to circumstances beyond your control and your return is audited, examiners may allow you to present reconstructed records. Additionally, examiners may accept oral testimony when records do not exist.”

Q7 asks – “In a single online transaction on an online marketplace, I sold two sets of four tickets (I bought for personal use) to two separate sporting events for \$1,000 (one set for \$800 and the second set for \$200) and I received Form 1099-K. I purchased each set of tickets for \$250 (\$500 total) two months prior to selling them. How do I report the sale on my tax return?”

The answer says to report the sale of the set with the gain on Form 8949, and the sale of the set with the loss on Form 1040, Schedule 1, with the sales price on line 8z and the cost, but not more than sales price on line 24z (as described above). Note – each sale is treated separately to determine if there is a taxable gain or a nondeductible loss – the two sales CANNOT BE merged and treated as one.

Q8 asks – “My friend and I went to a concert, and my friend reimbursed money to me for her concert ticket through an online application. If I get a Form 1099-K for the reimbursement, do I need to pay taxes on it?”

The answer says to report this 1099-K income on Form 1040, Schedule 1, line 8z with the wording “Form 1099-K Received in Error” and the same amount on line 24z with the same wording.

We suggest everyone obtain a copy of the Fact Sheet to read. It also may be beneficial to have copies available to share with clients who ask why you are reporting the 1099-K on their tax returns “when it is a reimbursement” or the “sale of a personal item”.

The Fact Sheet 2022-41 (13 pages) can be found at [irs.gov](https://www.irs.gov) by entering 2022-41 in the SEARCH box, and clicking on “Frequently asked questions about Form 1099-K IRS-FAQ”.

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