1099-K Forms and Taxes on Money Received by Mutual Aid Groups through a Member's Payment Platform Account

Hofstra Law School Community & Economic Development Clinic[1]

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Many mutual aid groups have refused to form corporate or non-profit entities or to open their own bank accounts and instead have tried to operate on a person-to-person scale, without that formality—often by relying on one member's account with a payment platform to receive money intended for the group. There are three main types of platforms that people are using to transfer money from one person to another person or group right now:

1. Venmo, PayPal, and CashApp are the most popular peer-to-peer payment systems. Peer-to-peer payment systems are online platforms that allow their users to send one another money from an app or website through a linked bank account or credit card.
2. GoFundMe, Kickstarter, and Patreon are examples of crowdfunding platforms, which allow a project or cause to raise money through small contributions from a large number of people online.[2]
3. Zelle is the most popular platform for directly transferring funds from one bank or credit union account to an account at another bank or credit union, a bank-to-bank payment platform.

We have been repeatedly asked about how these kinds of accounts will be taxed, and what to do if a member gets a 1099-K tax form. Only recently, with some recent guidance from the Taxpayer Advocate Service,[3] has the IRS's view of this question started to become clear to us.

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[2] There are five basic types of crowdfunding: (1) donative crowdfunding, where contributors give money to a project without receiving anything; (2) rewards-based crowdfunding, where contributors receive a good or service (but not a financial security) in exchange for their money, but not one worth an amount roughly equal to the amount of the contribution (unlike a routine purchase of goods or services); (3) pre-purchase crowdfunding, where contributors receive a copy of the final product prior to its public release; (4) debt crowdfunding, where contributors make a loan in anticipation of being repaid; and (5) equity crowdfunding, where contributors get an equity stake in the firm soliciting investments, like shares of stock. C. Steven Bradford, *Crowdfunding and the Federal Securities Laws,* 2012 COLUM. BUS. L. REV. 1, 14-27 (2012). For our discussion here, we are generally describing donative crowdfunding or rewards-based crowdfunding models where a contributor receives a token of appreciation with little or no cash value.

[3] IRS Taxpayer Advocate Service, *TAS Tax Tip: Use Caution When Paying or Receiving Payments from Friends or Family Members Using Cash Payment Apps* (Mar. 8, 2022), https://www.taxpayeradvocate.irs.gov/news/tas-tax-tip-use-caution-when-paying-or-receiving-payments-from-friends-or-family-members-using-cash-payment-apps/.

Background: Tax Law and Gifts

Under the Internal Revenue Code, all income, regardless of its source, is taxable unless there is an exception.[4] One important exception is that gross income "does not include the value of property acquired by gift," but the term "gift" is never defined in the tax code.[5] The leading Supreme Court case on the issue defines a gift as money given with "detached and disinterested generosity . . . out of affection, respect, admiration, charity, or like impulses."[6] In short, "the most critical consideration . . . is the transferor's 'intention'."[7] It seems likely that the intention of most people who send money to support a mutual aid project is not because there is an expectation of receiving goods or services like a business transaction, but out of generosity, respect, a desire to support the community, an admiration for the project, or a similar goal. However, every mutual aid group is different and contributions to a project might be given for different reasons, so it is important to understand the legal standard so you can correctly classify contributions to you.

Money given to a mutual aid group that is properly designated as a gift by the person making that gift should not be classified as taxable income, but not all peer-to-peer and crowdfunding platforms do a good job of allowing someone to designate a payment as a gift. Venmo, for example, seems to allow a payment to be classified as either for "friends and family" or as a "business transaction for goods and services." This choice seems like a poor fit for a lot of mutual aid contributions, as a stranger might give what legally should be classified as a gift, despite not really being a "friend or family." Other platforms use similarly inexact language, and some may not allow a person making a payment to classify it as a gift at all.

How these kinds of payments are classified is especially important because the rules on how the IRS is going to treat money given through a peer-to-peer or crowdfunding platform are changing.

The Changing Rules on Form 1099-K: What is Changing and Why it Matters

Form 1099-K is a tax form that reports taxable income a person receives through peer-to-peer, crowdfunding, and certain other "third-party network" platforms. Most peer-to-peer and crowdfunding platforms will issue this form when a certain amount of money is transferred to an individual through their platform, although—and this is an important distinction—the bank-to-bank platform Zelle says it will not issue 1099-Ks because it is not a third-party network platform.[8]

The 1099-K should report money that a person receives as part of a business transaction—if you baby-sit, do yard work, rent out your spare room, or sell any kinds of goods or services for money that is paid into your peer-to-peer or crowdfunding account, that should be

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[4] 26 U.S.C. § 61 (2017).
[5] 26 U.S.C. § 102 (1986).
[6] Comm'r v. Duberstein, 363 U.S. 278, 285 (1960) (quoting Comm'r v. Lobue, 351 U.S. 243, 246 (1956) and Robertson v. Comm'r, 343 U.S. 711, 714 (1952)).
[7] *Id.* (quoting Bogardus v. Comm'r, 302 U.S. 34 (1937)).
[8] *Frequently Asked Questions,* ZELLE, https://www.zellepay.com/faq/does-zelle-report-how-much-money-i-receive-irs.

reported on the 1099-K form. On the other hand, if you receive gifts or reimbursements through a peer-to-peer or crowdfunding platform, those amounts should not be reported on the 1099-K form—whether it's a friend reimbursing you for a meal you paid for, a birthday present from your aunt, or a gift from a stranger to support the mutual aid project you are collecting money to support, **if gifts meet the standard of having been given out of "detached and disinterested generosity . . . out of affection, respect, admiration, charity, or like impulses," they should not be listed as income on your 1099-K form.**

When a 1099-K form is issued, one copy is sent to the IRS and one is sent to the person with the account, so if that account holder receives a 1099-K—or even if they were supposed to receive a 1099-K but they moved and never updated their account information or the tax form was lost in the mail—the IRS will have received the form and is expecting the account holder to report the money listed on the form as income. Not reporting that income could lead to an IRS audit or other investigation.

As peer-to-peer and crowdfunding platforms have become increasingly popular over the last few years, many people who use these kinds of accounts but have never received a Form 1099-K may have gotten into the habit of not reporting the money they receive through these platforms to the IRS. Congress has become aware of this and changed the rules to crack down on people not paying taxes on income received through peer-to-peer and crowdfunding platforms. Up until these recent changes, in most states, peer-to-peer and crowdfunding platforms would issue a 1099-K only when an account both received over $20,000 in gross payments and that money came through more than 200 separate payments in a calendar year.[9] With the changes introduced in the American Rescue Plan Act of 2021, for 2022 taxes (the taxes due for most people in April 2023), most peer-to-peer and crowdfunding platforms are required to report any payments to an account holder who receives $600, regardless of the number of transactions, as long as the platform believes those payments are income—not gifts or reimbursements.

How to Choose and Use a Payment Platform

We do not yet know whether different peer-to-peer and crowdfunding platforms are going to adjust their services to better support their users with these new changes, but we have some guidance for how to select and use a payment platform as an individual using your account to support a mutual aid project.

A. *Look for a platform that allows people making a payment to classify that payment as a gift*. If someone making a payment to your group cannot designate it as a gift, the platform will very likely default to classifying that payment as taxable income and report all of it on Form 1099-K. Make sure that payments to you are properly classified, and encourage donors to your mutual aid group who intend for their contribution to be a gift that satisfies the "detached and disinterested generosity . . . out of affection, respect, admiration, charity, or like impulses" standard to indicate that their contribution is a gift when they contribute through the platform. It is

[9] However, in some states, including Arkansas, Florida, Illinois, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, Pennsylvania, Vermont, Virginia, and Washington, D.C., state law lowered this threshold, and payment platforms were required to issue 1099-Ks for account holders in those states at various smaller amounts.

probably a good idea to say clearly and in writing on any web page or platform where a request is being made that any such contributions do not entitle the donor to special treatment, a free gift, or any other benefit that is not already freely available to the community—assuming that is accurate.

B. *Look for a platform with good customer service and keep records of every transaction and what it was for so that you can advocate with the platform to make sure that any 1099-K you receive is as accurate as possible.* You should make sure that people who give gifts to your group mark them as gifts, and you should make a note in your own records of where a payment came from and what it was for. Ultimately, if you receive a Form 1099-K from a platform that incorrectly lists gifts or reimbursements as taxable income, you will need to ask the payment platform to correct the 1099-K and send the correction to the IRS. This requires good customer service from the platform and likely will require good record-keeping by the account holder to support their arguments to a payment platform that payments were incorrectly listed on their Form 1099-K as not payments for goods or services.

C. *Consider Zelle and any other bank-to-bank platforms.*[10] There is a significant difference between Zelle and the peer-to-peer or crowdfunding platforms when it comes to tax treatment. As Zelle is not technically a third-party payment processor, it does not issue 1099-Ks.

D. *Remember the burden on the individual offering their account*. Remember the time and possible financial burden that a member may be putting themselves in if they are offering their peer-to-peer or crowdfunding account to support your mutual aid group. Helping a member who may be confronting tax issues could be something your group wants to do to sustain your project—and a small tax bill might be something you could turn to your members or your community for financial help with, as part of the overall costs of operating the project.

<u>When a Member Receives a 1099-K Showing Income that Should be Classified as Gifts</u>

Many movement projects that have used payment platforms have confronted this issue in the past, many are confronting this issue now in the spring and summer of 2022, and, unfortunately, it is almost certain that many more will face this issue when they receive 1099-K forms in early 2023 for their 2022 taxes. Payment platforms must send a 1099-K to anyone they believe has received more than $600 in 2022 income through its service by January 31, 2023.

The IRS Taxpayer Advocate Service recently issued guidance for taxpayers who believe they have received a 1099-K form with errors in it, like if money that should have been properly

[10] This is not at all to say that Zelle is unproblematic—far from it. Zelle is owned by Early Warning Services, LLC, which, in turn, is principally owned by Bank of America, Truist (formerly BB&T), Capital One, JPMorgan Chase, PNC Bank, U.S. Bank and Wells Fargo. Unfortunately, we have not heard much about other bank-to-bank platforms that might be less tied to these kinds of banks.

classified as a gift was instead counted as part of the income reported on the 1099-K.[11] They recommend working on fixing your 1099-K as soon as you can after you receive it, because "January 31 does not give you a lot of time to fix any incorrect form at that point before filing."[12] They are also clear that **the IRS expects taxpayers to sort out any errors on their 1099-Ks with their payment platforms, and not to try to plead your case to the IRS**, writing that "mistakes may happen" and that if a gift or reimbursement is wrongly reported on a taxpayer's 1099-K, "you will have to contact the payment app company to request they send a correction to the IRS. This could be time consuming."[13]

In short, you should be prepared to contact your payment platform as soon as you can after receiving a 1099-K and you may benefit by having proof that the specific payments that were erroneously counted as income should properly be listed as gifts because the donor gave them with "detached and disinterested generosity," rather than as part of a business transaction. The better your records indicate that money given was intended to meet that gift standard, the more helpful they will be for these kinds of disputes.

[11] IRS Taxpayer Advocate Service, *TAS Tax Tip: Use Caution When Paying or Receiving Payments from Friends or Family Members Using Cash Payment Apps* (Mar. 8, 2022), https://www.taxpayeradvocate.irs.gov/news/tas-tax-tip-use-caution-when-paying-or-receiving-payments-from-friends-or-family-members-using-cash-payment-apps/.

[12] *Id.*

[13] *Id.*