

VOLUME 10, CHAPTER 6: FEDERAL, STATE, LOCAL, AND FOREIGN TAXES

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated September 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
060201	Updated agency name change from Defense Energy Support Center to Defense Logistics Agency–Energy (DLA-Energy).	Updated
060204.B	Added Federal Acquisition Regulation (FAR) link to substantiate a Taxpayer Identification Number (TIN) is required, and may be included as part of proper invoice prior to payment.	Add
060206	Provided the exception for TRICARE Management Activity, Corp of Engineers, and Enterprise Resource Planning (ERP) initiatives regarding Defense Finance and Accounting Service (DFAS) responsibilities.	Add
060206.F	Added Social Security Administration (SSA) reference.	Add
060208	Added responsibility for third party payors to file an Internal Revenue Service (IRS) Form 1099-K as appropriate.	Add
060209	Specified DoD individuals and their responsibilities for tax reporting for convenience check transactions.	Add
060404	Provided an example of when state / local taxes may be collected and deposited for payment to the state.	Add
060603	Clarified statute specifying no taxes are imposed on Arms and Ammunition transferred or sold if purchased using military appropriations.	Updated
060702.C	Specified no IRS Form 1099-MISC is required for purchase cards and centrally billed travel paid using a government credit card.	Updated
060706.B.1	Added rejected invoice consequence if TIN not provided as required.	Add
060706.C.1	Clarified backup withholding of taxes for payments without a TIN.	Add

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CHAPTER 6

FEDERAL, STATE, LOCAL, AND FOREIGN TAXES

0601 OVERVIEW

060101. Purpose

This chapter prescribes the policy surrounding payment of federal, state, local, and foreign taxes. It also provides the information required for Department of Defense (DoD) Components ([Military Departments and Defense Agencies](#)) to fulfill information reporting requirements under [Title 26, United States Code \(U.S.C.\), Chapter 80](#). These reporting requirements apply to certain contract, vendor and miscellaneous payments ([including miscellaneous payments](#) to military and civilian employees) made by commercial payment operations.

060102. General Policy

A. Tax Information Sources. The Federal Government's right to tax exemptions depends on the applicability of federal, state, local, and foreign tax law; tax agreements with foreign countries; items being acquired; the nature of the tax; and the type of transaction. See [Federal Acquisition Regulation \(FAR\), Part 29](#) for general tax applications on the United States (U.S.) purchases, right to exemptions, and the methods of claiming exemptions. Specific information not obtainable locally may be obtained from taxing authorities or through discussions with the Component's general counsel regarding the applicability of various taxes.

B. Exemptions from Certain Federal Taxes

1. [The Federal Government has been exempted under Title 26, U.S.C., section 4293](#) from Federal taxes on services and facilities furnished to and paid for by the Government. This does not include facilities furnished to a government contractor. Exemption can be made with or without the use of an exemption certificate. The installation (or issuing) contracting office is responsible for preparing tax exemption certificates.

2. [The Federal Government has been exempted under Title 26, U.S.C., section 4483\(b\)](#) from the Federal highway vehicle use tax imposed in [26 U.S.C. 4481](#). The exemption applies whether the vehicle is owned or leased by the Federal Government.

C. Sales of Commodities or Facilities. Tax collections are required on commodities or facilities sold that are not for the exclusive use of the U.S. When tax free items or services purchased by the U.S. are sold to others, collect costs plus required taxes. The selling activity identifies customers and items or services subject to tax and includes any applicable taxes in billing documentation or statements. Taxes remitted are sent to the taxing authority.

D. Guidance. Internal Revenue Service (IRS) published guidance takes precedence over DoD guidance for the resolution of tax issues. If there are legal questions regarding reporting requirements not otherwise addressed or resolved by the guidance provided

in this chapter, or for any apparent conflicts between DoD and IRS guidance, then responsible officials should consult their agency designated counsel.

E. Nonappropriated Fund Instrumentalities (NAFI). Tax issues for NAFI are covered in Volume 13, Chapter 7 of this Regulation.

0602 RESPONSIBILITIES

*060201. Defense Logistics Agency-Energy (DLA-Energy) Responsibilities

DLA-Energy, 8725 John J. Kingman Road, Fort Belvoir, VA 22060, is responsible for:

A. Any application for tax refunds applicable to DLA-Energy programs. If DLA-Energy supports a Federal civilian agency, then that civilian agency is responsible for collecting data needed to apply for tax refunds.

B. Contracting for fuels to include use of the proper clauses concerning local tax provisions as provided in FAR Subpart 29.4.

060202. Military Departments and Defense Agencies

DoD Components should take maximum advantage of exemptions for excise taxes. The National Guard is considered a state agency for tax purposes.

060203. Contracting Officer Responsibilities

The contracting officer (either the procuring contracting officer or administrative contracting officer) is responsible for:

A. Inserting the appropriate contract clause with regard to taxes to be paid,

B. Soliciting prices on a tax-exclusive basis when it is known that the Government is exempt from these taxes, and on a tax-inclusive basis when no exemption exists, as directed in FAR 29.201,

C. Contacting local and/or state taxing authorities to verify acceptance of tax exemption certificates,

D. Working with fleet card issuers to maximize excise tax reclamations (recoupment),

E. Ensuring that contractors are aware of and understand duty-free entry clause requirements, and

F. Resolving tax liability or tax exemption disputes associated with government contracts.

060204. All Contractors, Vendors, and Individual Payees

A. Contractors, vendors, and individual payees requesting payment from a DoD Component may be required to take certain action with regard to payment, nonpayment, refund, protest, or other treatment of a specialized tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated. See [FAR 29.304](#).

* B. The contractor and vendor, when required, will enroll in the [System for Award Management \(SAM\)](#) (formerly Central Contractor Registration), refer to [FAR Subpart 4.11](#), or provide a valid Taxpayer Identification Number (TIN) pursuant to [FAR 4.203](#), or as part of a proper invoice prior to payment. [Title 31 U.S.C. 7701\(c\)](#) requires all payees, subject to the U.S. Internal Revenue Code, requesting payment from a DoD Component, to furnish their TIN which is either an Employer Identification Number (EIN), or a Social Security Number (SSN), prior to receiving payment. See [FAR 4.902](#).

C. If the contractor or other payee believes the [IRS Form 1099-MISC \(Miscellaneous Income\)](#), [Form 1099-INT \(Interest Income\)](#), or [Form 1099-C \(Cancellation of Debt\)](#) was improperly completed or had incorrect information, then they must provide written evidence needed for a correction to the entitlement office.

060205. Fleet Card Issuer

The Fleet Card issuer (third-party payor) is responsible for working with [DLA-Energy](#) and Defense Finance and Accounting Service to maximize excise tax reclamations, as rules and procedures vary by state. Generally, states require that tax reclamations be completed after payment is made.

*060206. Defense Finance and Accounting Service (DFAS) Responsibilities

Except for [TRICARE Management Activity](#) and [Corps of Engineers](#) payments, and [Enterprise Resource Planning \(ERP\)](#) payments where responsibility has otherwise been assigned, DFAS is responsible for:

A. Computing all appropriate tax withholdings, making deposits to the United States Treasury, and filing the appropriate tax documents with the [Internal Revenue Service](#),

B. Paying excise taxes as appropriate,

C. Reclamation of Federal and state excise tax related to fuel purchases, based on data provided by either [DLA-Energy](#) or Fleet Card issuers. Filing for reclamation will include the National Guard,

D. Recording any taxes recovered in the applicable accounting systems,

E. Reviewing payment information to determine if a payment is reportable under current IRS guidelines, and

* F. Filing IRS Forms W-2 or 1099 or other type returns with the Social Security Administration (SSA) and/or IRS.

060207. Office of the Staff Judge Advocate or General Counsel

These offices are responsible for providing available payment data related to all settlements of personnel cases. The document forwarded to the paying office must identify the type of payment(s) represented by the settlement (for example, compensatory damages, back pay, overtime, attorney fees, or interest), as well as the dollar amount attributed to each type of payment. This information will be used to determine the proper tax reporting of the payments. These offices also provide the information required to properly report payments to attorneys under 26 U.S.C. 6045(f), separate from the claims settlement payment.

*060208. Third-Party Payors (VISA and MasterCard)

Third party payors are responsible for filing IRS Form 1099-K as appropriate. The DoD is not responsible for filing IRS Form 1099-MISC when payment is made using these payment vehicles.

*060209. Convenience (Accommodation) Check Account Holder

The account holder (check-writer) and the Agency/Organization Program Coordinator (AOPC) are the DoD individuals responsible for tax reporting for convenience check transactions. Responsibilities include obtaining access to the DFAS 1099 Tax Reporting Program through the DFAS Tax Office using the Department of Defense (DD) Form 2869 and DD Form 2875. The account holder must capture the following check recipient data throughout the tax year in the Tax Reporting Program for reporting to the IRS:

- A. Legal name (the name by which the check recipient taxes are filed),
- B. Legal mailing address,
- C. Taxpayer identification number (SSN or EIN),
- D. Check number,
- E. Check amount,
- F. Date the check is written, and
- G. Item description.

060210. Debt Management

Activities that manage debt and approve [the termination of debt collection activities](#) must provide information related to cancellation of valid debts to the DFAS Debt Management Office. They must identify the person or business that has a reportable canceled debt. See Chapter 18 of this volume for additional guidance on canceling debt.

0603 FEDERAL TAXES

060301. Federal Excise Tax (FET)

A. General. Except for exemptions provided by the Internal Revenue Code as set out in [FAR Part 29](#), the Government must pay FET on fuel purchases. If a contract does not specify that the contract price excludes FET, then assume the contract price includes the tax and pay only the contract price. If the contract [price](#) specifically excludes the tax, then FET [for fuel purchases must be billed](#) on the invoice as a separately identified item [from the contracted fuel price](#).

B. Exemptions. Tax exemptions or refunds are available for DoD purchases of aviation fuel and off-highway use of gasoline and road diesel fuels. Whether or not an exemption is available or a refund application is required depends on where in the distribution chain the purchase was made and the IRS status of the seller of the fuel.

C. Refunds. [Requests](#) for refunds [must be filed on an IRS Form 8849 \(Claim for Refund of Excise Taxes, Schedule 1, Nontaxable Use of Fuels\)](#).

D. Federal Excise Tax on Motor Fuels. The Tax Reform Act of 1986 eliminated tax-free sales to exempt entities and organizations. The tax-exempt entities are defined as state (including National Guard) and local governments, the American Red Cross, and nonprofit educational organizations. Tax-exempt entities must pay the tax and file for a refund.

E. Quarterly Federal Excise Tax Return

1. Reports are prepared and submitted quarterly [by the DFAS accounting office responsible for reporting DLA-Energy activity](#) unless notified differently by the IRS District Director. A return is made on [IRS Form 720 \(Quarterly Federal Excise Tax Return\)](#) for the first calendar quarter when a tax liability is incurred and each [subsequent calendar quarter until a final return is filed](#). Final returns [shall be marked "FINAL" and are applicable only when no FET is owed and reportable in future quarters](#). See [IRS Publication 510](#) for additional guidance.

2. Form 720 contains a list of the commodities and services subject to the tax and the tax rate. This form also serves as the return for all excise taxes for which quarterly reporting is required.

3. Credit collections for FET are made to deposit fund accounts. Deposit excise taxes collected using the most current instructions received from the IRS. Generally, semi-monthly deposits of excise taxes are required and must be made electronically to the Department of the Treasury.

a. Show the schedule of collection numbers, dates, and amounts for the collections.

b. Report the amounts of FET collected and deposited for the sale of [aviation fuel](#) other than for the exclusive use of the U. S. Government.

4. Preparation of IRS Form 720

a. The [DFAS](#) accounting office prepares Form 720. Instructions for preparing this form are in [IRS Instructions for Form 720](#). The form can be obtained online at [IRS Form 720 \(Quarterly Federal Excise Tax Return\)](#).

b. The Form 720 is due on or before April 30, July 31, October 31, and January 31.

c. Submit the original Form 720 to the appropriate IRS Center; [include](#) the amount of taxes collected.

0604 STATE AND LOCAL TAXES

060401. State and Local Taxes [Policy](#)

DoD Components shall assert the government's immunity or exemption from taxes whenever it is available. State statutes indicate whether the tax is levied on the seller or the purchaser. The process for seeking refunds differs from state to state. Some states accept [Standard Form \(SF\) 1094, U.S. Tax Exemption Form](#); some states have their own required forms; and other states require payment of the tax at the time of purchase and provide a means for seeking refunds of the tax. The contracting officer will contact the local state taxing authority to verify if they accept tax exemption certificates. A blanket-type tax exemption certificate is used to obtain the U.S. Government's exemption from state or local taxes in the case of continuing or numerous purchases from contractors. Payments of state and local taxes are supported under the following conditions:

A. When the tax is levied on the seller, the Federal Government must pay the tax as part of the purchase price, unless the taxing authority provides otherwise.

B. When the Government has, by contract, agreed to reimburse the contractor for taxes paid to a state or municipality.

Unless specifically stated otherwise in the contract, it is presumed that state and local taxes are included in the contract price. When there is a valid and binding contract covering the

furnishing of supplies or services at fixed unit prices, and the contract contains no provision for the adjustment of such prices in the event of the imposition on the contractor of state taxes applicable thereto, there is no authority for the payment of any taxes over and above the unit price stipulated in the contract.

060402. Credit Cards for Service Station Purchases

If a service station does not accept the Government's tax exemption at time of purchase, then the tax will appear on the invoice. The disbursing office may pay the state or local tax on the credit card invoice. [DLA-Energy](#) is responsible for supplying applications for tax refunds on fuel purchases at service stations. Refer to paragraph 060201 for more information on [DLA-Energy](#) responsibilities.

060403. Bulk Purchases of Fuel

The rules for credit card purchases also apply to state and local taxes on bulk purchases of diesel fuels and gasoline (see paragraph 060402).

*060404. Disposition of State or Local Taxes

Disbursing offices deposit amounts collected on individual sales during a month to the applicable deposit fund account. [An example of such sales would be the Base Exchange or Commissary selling gasoline or motor fuels to a customer that must pay state mandated taxes. See 4 U.S.C. 104.](#) Make payments to the state or political subdivision using SF 1049. Remit on or before the 15th day after the month [the](#) collection was made.

060405. Leases and Rentals

Leases and rentals may be subject to various state and local taxes. See [FAR 29.302](#), application of state and local taxes to the Government, and FAR 29.304 for additional guidance. See [FAR Subpart 29.4](#) for contract clauses concerning state and local taxes on leases and rentals.

0605 CUSTOMS DUTIES

060501. U.S. Customs Duties on Foreign Purchases

A. [Duty-Free Purchases](#). Emergency purchases of war materials abroad can be made by the [DoD Components](#). This material will be admitted free of duty. The current version of the U.S. International Trade Commission's [Harmonized Tariff Schedule](#) contains details pertaining to the classification and rate of duty. However, only Customs and Border Protection can provide legally binding advice or rulings on the classification of imports. See [FAR Subpart 25.9](#) and [Defense Federal Acquisition Regulation Supplement \(DFARS\) Subpart 225.9](#) for additional guidance.

B. [Payment of Custom Duties](#). If the importation is not duty free, then charge the custom duty to the same appropriation as the purchase. This is done even though the

importation and purchase may be in different fiscal years. Prepare vouchers to show the [payment remitted](#) to the Collector or Deputy Collector at the port of entry.

060502. Customs Exemptions for American Imports and Purchases in Canada for Joint Defense Program

A. General. The Government's imports and purchases from other countries are exempt from Canadian import duties and taxes when used for joint Defense projects in Canada.

B. Refund or Remission of Taxes. Goods purchased in Canada by or for the U.S., or by the Canadian Commercial Corporation, are governed by concessions when U.S. funds expended are intended for joint Canadian-U.S. projects in Canada or when the goods will become and remain U.S. property. See [Defense Production and Development Sharing Remission Order \(C.R.C., c. 755\)](#). The concessions permit refund or remission in certain circumstances, including:

1. Sales taxes paid on goods other than those for resale to members of the U.S. Armed Forces or civilian personnel for private use.

2. Excise taxes, including the stamp tax on checks. Items for resale to members of the U.S. Armed Forces or civilian personnel for private use are not exempt from stamp taxes or purchase taxes.

3. Customs duty paid on import goods when used, directly consumed, processed, or attached to items or goods manufactured in Canada and sold to the U. S. Government for use with joint Canadian-U.S. projects.

C. Notation on Payment Vouchers. Vouchers for Canadian purchases or services will show: "United States Government Funds exempt from Canadian excise tax, refer to Order in Council PC 3108." This statement will assist the Canadian Department of National Revenue in giving the exemption.

D. Excise Taxes Payable. The following are excise taxes payable, notwithstanding the Canadian purchase concessions described in 060502.B:

1. Cable, telegraph, and long-distance telephone messages when charges are not made to individuals, but are made directly to the U.S. Government, and

2. Transportation requests, warrants or tickets, seats, berths, or other sleeping accommodations when charges are not made to individuals, but are made directly to the Government.

0606 MISCELLANEOUS

060601. Payments in Lieu of Taxes

Issues involving payment of taxes are complex and should be referred to the activity's servicing legal office.

A. Charges by state or local governments for services levied on Federal Government entities or their contractors, which are not imposed on residents or nonfederal tax exempt entities, where the cost of service is borne by the general tax revenues, are in the nature of a tax to which the U.S. is immune.

B. A reasonable charge by a political subdivision based on the "quantum" of direct service furnished, and which is applied equally to all property tax exempt entities, is not considered a tax against the U.S., even though the services are furnished to taxpayers without a direct charge, provided the political subdivision is not required by law to furnish the service involved without a direct charge to all located within its boundaries.

C. Payments are permitted in lieu of taxes to municipalities that have lost tax revenue due to the transfer of plants to Government Components, only when authorized by the Congress. Payments in lieu of taxes are not authorized if the property transferred was never on municipality tax rolls and municipal services had never been furnished.

060602. Foreign Taxes

U. S. Government purchases in a foreign country are not exempt in general from taxes and custom duties when imposed by the foreign country. The Status of Forces or government tax agreements may provide [exemptions](#). See [FAR 29.402](#) for [specific clauses pertaining to foreign taxes](#).

*060603. Taxes on Arms and Ammunition

[Taxes may not be imposed on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges when such articles are purchased with funds appropriated for a military department. See 10 U.S.C. 2385 and FAR Subpart 29.2.](#)

060604. Environmental Assessments

If an environmental assessment is levied by a local government and it represents a fee, then payment is authorized. If the assessment appears to be a tax and its legality is questionable, then payment is not authorized. Payment under protest should not be made and legal advice should be obtained from [the](#) office of general counsel regarding payment of assessments by state and local governments.

0607 FEDERAL TAX REPORTING

060701. General

A. At the end of each calendar year, payment or entitlement offices are required to report certain payments to the IRS. The reporting requirements are established by [26 U.S.C. 6041](#), [6041A](#), [6045\(f\)](#), [FAR 4.904](#), and current IRS instructions/guidelines. Payment or entitlement offices must provide the recipients (payees) with an IRS Form 1099 by January 31 following the year of payment. Additional guidance is published in the [Treasury Financial Manual, Part 3, Chapter 4000 \(Federal Income, Social Security, and Medicare Taxes\)](#).

B. There are various payments made to military members and civilian employees that are subject to IRS Form W-2 (Wage and Tax Statement) reporting (e.g., military award payments and medical health service providers paid under individual set-aside contracts). [Some of these payment types may require tax withholding and will be reported on the IRS Form W-2](#). At the end of each calendar year, payment or entitlement offices are required to report these payments via Form W-2 according to current SSA/IRS guidelines.

060702. Tax Reporting Policy

A. Each DoD Component is responsible for the preparation of an IRS Form 1099 on its contract or vendor payments that total \$600 or more, or royalties of \$10 or more in a calendar year to a single person or business entity (partnership, sole proprietor, or corporation), unless an exception applies. For DFAS serviced activities, DFAS will prepare, print, and distribute the hard copy of the IRS Form 1099 to the vendor/contractor/payee and forward the same information to the IRS. If an IRS Form 1099 is required to be corrected, then the paying office that maintains the underlying payment record provides the information necessary to effect the correction. If the vendor/contractor/payee believes the IRS Form 1099 was improperly completed or had incorrect information, then they must provide written evidence needed for a correction.

B. Payment data in various payment systems for the same contractor must be merged to determine if an entity was paid more than \$600 for reportable payments.

* C. [No IRS Form 1099-MISC is required](#) for purchase cards and centrally billed travel paid using a government credit card.

D. If payment is made with a convenience check associated with a government [purchase](#) card program, then the check-issuing activity must forward the information [outlined in subparagraphs 060209.A – G](#) for reportable payments to DFAS on a monthly basis and prior to December 31st of each year, to ensure that an IRS Form 1099 is issued. Activities must contact the DFAS Tax Office to obtain access to the 1099 Tax Reporting Program before transmitting convenience/accommodation check data.

E. DFAS will not make a determination of independent contractor or employee status for tax purposes when payments are made to individuals. That determination is

at the discretion of the contract-issuing activity. If there is a question, then the contract-issuing activity, through its chain of command, will submit an [IRS Form SS-8 \(Determination of Worker Status for Purposes of Federal Taxes and Income Tax Withholding\)](#) to the IRS Associate Chief Counsel (tax exempt and government entities) for a determination. See [IRS Pub 1779 \(Independent Contractor or Employee\)](#) for additional information.

060703. [IRS Form 1099 Information Reporting](#)

A. [Payments Subject to Reporting](#). Certain contract and vendor payments are subject to [IRS Form 1099](#) reporting in accordance with IRS regulations/guidelines.

1. [General Rule](#). Payments are aggregated for the taxable year for:

a. Business entities: sole proprietors, partnerships, and corporations, with some exceptions,

b. Corporations providing medical and health-care services which are not otherwise exempt from taxation under [26 U.S.C. 501\(a\)](#),

c. Canceled debts, and

d. Interest (including [Prompt Payment Act \(PPA\)](#)) to individuals, sole proprietors, and partnerships. Corporations are exempt from reporting interest.

2. [Payment for Services](#)

Payments or compensation for services rendered, including medical or health-care services and contractual legal services, are subject to [IRS Form 1099](#) reporting unless the payment should be reported on an [IRS Form W-2](#). This reporting requirement applies regardless of whether payment is issued to an individual, a sole proprietorship, a partnership, or a corporation. The requirement does not apply when a payment is made to a hospital or extended health-care facility that is exempt from taxation under 26 U.S.C. 501(a) or to a hospital or extended health-care facility owned and operated by the U.S. or an agency or instrumentality of the U.S. This reporting rule also applies to payments issued to U.S. corporations, paid in U.S. dollars, for service contracts that are executed in foreign countries.

3. [Payments for Taxable Settlements](#)

a. Generally, payments for personnel claims, Equal Employment Opportunity actions, and grievances represent taxable income and should be reported on an [IRS Form 1099](#), but may be reported on an [IRS Form W-2](#) depending on the classification of the settlement categories. This includes amounts paid in settlement, damages for nonphysical injuries or sickness (such as employment discrimination or defamation), liquidated damages, and punitive damages. Amounts paid on account of personal physical injury or physical sicknesses, however, are not taxable and are not reported on an [IRS Form 1099](#). In addition, compensatory damages received based on emotional distress or injury that are

attributable to a physical injury or physical sickness, are not taxable and not reported on an **IRS** Form 1099 to the extent that the amount paid does not exceed the amount paid for medical care for the emotional distress. Damages paid on account of emotional distress, including physical symptoms such as insomnia, headaches, and stomach disorders, which are not attributable to a specific physical injury or physical sickness, are reportable.

b. In cases where the amount to be paid to the complainant represents back pay and the claim originates with a DoD activity whose civilians are paid by DFAS, the claim must be forwarded to a civilian pay office for payment and issuance of an **IRS** Form W-2. DoD activities **must** forward claims representing back pay to their supporting payroll office.

c. The office forwarding personnel claims as described in Chapter 12 of this volume for payment, such as taxable settlement awards, is responsible for providing information with the settlement documents that are needed for tax reporting. All settlement payments are presumed to be taxable, unless otherwise indicated in the settlement agreement or meet one of the specific categories that are nontaxable.

4. Gross Proceeds Paid to an Attorney. The total amount paid to an attorney for legal services, other than contractual legal services, must be reported on an **IRS** Form 1099 as required by 26 U.S.C. 6045(f). The term “attorney” includes a law firm or other providers of legal services, such as a corporation. This reporting requirement applies regardless of whether or not legal services are provided to the Government, and if the attorney is the sole payee. In the case of payment by check, payment is considered to be made to the attorney or law firm, if the attorney or law firm is named as a sole, joint, or alternate payee. A need to issue two **IRS** Form 1099s on a single payment may occur. In this case, issue an **IRS** Form 1099 to the complainant and another **IRS** Form 1099 to the attorney. Information that must be provided by the office forwarding the claim for payment includes but is not limited to: payee name(s); payee TIN; amount paid; payee address(es); and settling activity identification. See [**IRS Bulletin 2006-33, section 1.6045-5**](#) for information reporting on payments to attorneys.

5. Vendors in U.S. Territories. Service payments to vendors located in Puerto Rico, Guam, and the U.S. Virgin Islands are subject to **IRS** information reporting.

B. Payments Not Subject to Reporting. The following classes of contract and vendor payments are not subject to **IRS** Form 1099 reporting:

1. Payment of bills for merchandise, transportation, freight charges, telegrams, telephone, storage, and similar charges,
2. Payments subject to reporting on an **IRS** Form W-2, which generally relates to compensation paid to DoD employees or service members,
3. Payments of rent, if made to a real estate agent,

4. Payments to government employees as an allowance or reimbursement for traveling or associated expenses, including claims for damaged household goods,
5. Payments made as an award to an informer or similar payments,
6. Payments made to a Government agency, political subdivision, or instrumentality thereof,
7. Payments to organizations that are exempt from taxation under 26 U.S.C. 501(a), and
8. Payments made to government employees for service performed in Puerto Rico. These payments should be reported on an [IRS Form W-2](#). See Volume 8, Chapter 4 of this Regulation.

060704. Debt Actions Subject to [IRS Form 1099-C](#) (Statement for Canceled Debt)

A. Federal agencies are required to report the cancellation of each individual debt to an individual, sole proprietor, partnership, or corporation. The term “debt” includes the principal owed, interest, penalties, administrative costs, and fines. If, however, interest is included in the amount reported on the [IRS Form 1099-C](#), then it must be listed separately on the form. A debt is considered to be canceled on the date that the authorized individual approves the [termination](#) of the debt-collection process.

B. The cancellation of the debt is reported on [IRS Form 1099-C](#), regardless of whether the debtor is required to report the debt as income. A copy of the [IRS Form 1099-C](#) must be provided to the debtor by January 31 of the year following the year in which the debt is canceled. If payment is received on a previously canceled prior year debt, then there is no requirement to file an additional or corrected [IRS Form 1099-C](#).

060705. Payments to Individuals Subject to [IRS Form W-2](#) Reporting

A. General. As discussed in Chapter 12 of this volume, various payments are issued by DFAS to, or on behalf of, DoD employees and military members. Payments may be subject to tax withholding and tax reporting (Federal and state) on an [IRS Form W-2](#).

B. Cash Awards to Military Members

1. Cash awards to military members for disclosures, suggestions, inventions, and scientific achievements are subject to the withholding of Federal and state income taxes. Certain Combat Zone Tax Exclusions (CZTE) may apply. Information on the CZTE is available in [IRS Pub 3 \(Armed Forces' Tax Guide\)](#) and Volume 7A, Chapter 44 *Withholding of Income Tax* of this Regulation.

2. For purposes of issuing an [IRS W-2](#), DFAS will withhold taxes and will issue an [IRS Form W-2](#) by January 31 of the year following the award payment.

060706. Procedures for the Payee Copy

A. Instructions. When preparing an [IRS Form 1099-MISC](#), reporting activities must be sure to follow the IRS Instructions for [IRS Form 1099-MISC](#), as the IRS uses this information to determine whether the recipient has properly reported the payment.

* B. Requirements for Taxpayer Identification Number (TIN)

1. [Title 26 U.S.C. 6109](#) requires a recipient of income to give the payor their TIN for use in filing tax information returns. The TIN is the individual's SSN or a business' EIN. A Privacy Act statement must be provided to an individual when requesting the reporting of an SSN. If the TIN is not readily available from the [SAM \(formerly CCR\)](#) or [Corporate Electronic Funds Transfer](#) systems, or from contractual or other documents, then the contracting officer is responsible for contacting the payee to obtain their TIN. See [FAR 4.203](#) and [Subpart 4.9](#). Individuals or entities that refuse or fail to provide a TIN are to be advised that such refusal or failure may result in either a rejection of payment request (improper invoice), as described in Chapter 8 paragraph 080207 of this volume, or a reduction of the payment otherwise due because of backup tax withholding for reportable payments as described in 060706.C.1 of this chapter.

2. Both the [Debt Collection Improvement Act of 1996 \(DCIA\)](#) and FAR 4.9 require the collection of a TIN. A valid TIN is also part of a complete [SAM](#) listing. Entitlement systems will validate remittance and TIN data against the [SAM](#). For payees exempt from [SAM](#), but required to have a TIN, the TIN may be collected from any source. If a TIN has not been provided when payment is to be made, then the payment is subject to backup tax withholding at the current rate, see subparagraph 060706.C.1. In these circumstances, the contractor or vendor is not eligible for PPA interest, as they have not fulfilled the requirements for a proper invoice as stated in Chapter 7 of this volume. Miscellaneous non-contractual payments, where the TIN has not been provided, are subject to backup withholding and the resulting payment reduction.

* C. Backup Withholding

1. In most instances, pursuant to [31 U.S.C. 3325](#), DoD may not make a payment without a valid TIN. If payment is appropriate without a TIN, and no exception to backup withholding applies, backup withholding must occur. Backup withholding requirements are enforced on a payment by payment basis, regardless of payment size. When an individual or entity has not provided a TIN as described above, the backup withholding requirement is applicable. See [26 U.S.C. 3406](#) for additional guidance. Because of the TIN requirement imposed by 31 U.S.C. 3325, backup withholding within DoD should be extremely rare.

2. Backup withholding requirements are separate from the reporting thresholds that apply to most [IRS Form 1099](#) reporting. Backup withholding is applied to the

principal payment only, to exclude such charges as transportation charges or interest. Payments that are not subject to reporting on the [IRS Form 1099](#), as set forth in subparagraph 060703.B, are not subject to backup withholding.

3. The backup withholding is reported to the IRS. The paying office will generate both an [IRS Form 1099-MISC](#), reporting tax withheld in box 4 to the payee, and [IRS Form 945 \(Annual Return of Withheld Federal Income Tax\)](#) for the IRS. Additional guidance is available in separate IRS instructions for Form 945, [IRS Pub 15, \(Circular E\), "Employer's Tax Guide"](#), and [IRS Pub 1281 \(Backup Withholding for Missing or Incorrect Name/TINs\)](#).

4. DoD activities must perform backup withholding on reportable payments when the following conditions exist:

a. The IRS informs the paying office that the payee provided an incorrect TIN and reportable payments to the payee total \$600 or more during the calendar year, or

b. An information return was required concerning the payee for the preceding calendar year, or

c. Backup withholding was required from the payee for the preceding year.

060707. Filing Information Returns with the IRS

A. [IRS Form 1096 \(Annual Summary and Transmittal of United States Information Returns\)](#) and [IRS Form 4419 \(Application for Filing Information Returns Electronically \(FIRE\)\)](#).

1. Forms Required

a. When filing manual (paper) [IRS Form 1099s](#), the [IRS Form 1096](#) must be used to transmit and summarize payment information. It serves as a cover sheet for one or more individual reports. See IRS instructions for [IRS Form 1096](#) for detailed guidance. [IRS Form 1096](#) is obtained through the IRS publication and forms Web site at www.irs.gov.

b. A separate [IRS Form 1099](#) must be completed for each entity concerned and collectively are covered by one [IRS Form 1096](#). [IRS Form 1099s](#) are obtained through the IRS publication and forms Web site at www.irs.gov.

2. Distribution of Report. [IRS Forms 1096](#) and [1099](#) are to be filed according to [IRS Publication 1220 \(Specifications for filing various IRS forms electronically\)](#), by February 28 following the year of payment, with the appropriate IRS center listed in the instructions for [IRS Form 1096](#).

3. Electronic Filing. When filing 250 or more IRS Form 1099 returns in a single report, filings are done electronically, and are required to be filed by March 31 following the year of payment. These electronic filing procedures are published annually in IRS Publication 1220.

060708. Records Retention

Activities preparing information returns must have the ability to reconstruct the data or records used to prepare the IRS Form 1099. The data or records shall be retained for at least three calendar years after filing the information return. See *IRS General Instructions for Certain Information Returns*. These records permit an audit trail that will substantiate the amount(s) reported by showing all relevant payments, to include payments from multiple contracts. The retention period for IRS Form 1099-C or backup withholding data is 4 calendar years after filing the information return. The issuing location must maintain a copy of information returns or be able to recreate the tax document.