



2015 Newsletter on Form 1099 Reporting

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IRS Increases Scrutiny Over 1099

Following the stated guidelines of Form 1099 will help avoid penalties and notices. The filing requirements for 1099s have evolved over the past few years. Late and non-filing penalties have increased, and the IRS is increasing business owners' accountability by adding two questions to all business income tax returns. The first asks if the business made any payments that would require the filing of a 1099. The second asks if the business prepared and filed the 1099s (assuming there were qualifying payments). A "yes" answer to the first question and a "no" to the second, will raise a red flag with IRS.

The best course of action is to be vigilant in obtaining vendor information using Form W-9 so you are easily able to prepare 1099s at the end of the year.

Making 1099 Reporting Easier

- If given the option, pay vendors by debit or credit cards, rather than by cash or check. IRS rules stipulate that business owners are not responsible for reporting amounts paid to vendors by debit or credit cards.
- When paying vendors for the first time, always have them fill out Form W-9 prior to issuing the payment, regardless of the amount. This will take the headache out of trying to track them down at the end of the year. You can access the form at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

We encourage you to call us with any question you may have regarding the information in this newsletter or any other matter.

On the Web...

There is a wealth of information and forms available on the internet. The following websites are very helpful:

Visit our website:
www.hblcpa.com

Internal Revenue Service:
www.irs.gov

A search engine for government services with links to all states:
www.usa.gov

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Q & A – Our Most Frequently Asked Questions

Q: We need to send a Form 1099 to someone, and we don't have their taxpayer identification number. How do we get this information?

A: Provide Form W-9 to anyone whose payment(s) may require a Form 1099 with the stipulation that it must be returned to you before issuing them a check. Form W-9 is the IRS form to request an identification number from someone other than an employee. This will eliminate the need to track people down in January in order to file on time. Access the form at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

Q: I received a 1099-K, what is this?

A: If your company accepts debit or credit cards, you will receive a 1099-K if gross transaction amounts exceed \$20,000 and there are more than 200 transactions in the calendar year. Please be sure to provide us with any 1099-Ks that you receive so we have this information when preparing your tax return.

Q: One of my vendors told me that I don't need to issue them a 1099 because they are an LLC. Am I still required to prepare a 1099 for them?

A: It depends. The best way to find out if you need to issue a 1099 to someone is to have them fill out Form W-9. If the business is an LLC, the LLC box on the W-9 should be marked and their tax classification code filled in. If they mark "C corporation" or "S corporation", then you DO NOT need to issue a 1099. In all other cases, you will need to issue a 1099 to the vendor.

Q: Is it permissible to hand-write a 1099?

A: Though not required, the IRS does encourage you to type the form and, further, asks that it be legible, in black ink and that you not use dollar signs, commas, ampersands or other symbols, whether they are typed or hand-written.

Q: A 1099 that I mailed to a vendor came back as undeliverable. What should I do?

A: Try to contact the vendor to obtain updated information. If that is not possible, keep the form in your records for at least 4 years from the due

date. For example, a 1099 for the calendar year 2015 has a due date of January 31, 2016. If it is returned to you, keep it in your records until at least January 31, 2020.

Q: How long should I keep copies of the 1099s that I've filed?

A: Keep them for at least 4 years from the due date.

Q: I received a notice from the IRS that says the information on the 1099 I prepared may be incorrect and that I may need to start backup withholding. They also included a list of the 1099s that were incorrect. What does this mean?

A: These notices are sent out when the information on the 1099 does not match information that the IRS has on record. It could be as simple as the recipient name being reported as "Bob Jones" instead of "Robert Jones" or a transposition of numbers for the taxpayer identification number (TIN). It could also mean that the information you received from the 1099 recipient was incorrect. If the information originally reported was incorrect, simply update your records so that the 1099 information for the succeeding year is accurate. You do not need to issue corrected forms to the recipient or the IRS under these circumstances.

If the information you originally submitted to the IRS is correct, and assuming you are still paying this person/business, you must send them a First "B" Notice and Form W-9 stating that you will begin backup withholding, usually at a rate of 28%. This means that for every \$100 you owe the vendor, you will pay them \$72 and the remaining \$28 will be sent directly to the IRS with Form 945. For more information, please go to: <http://www.irs.gov/pub/irs-pdf/p1281.pdf>



1099 Forms

The instructions for filing Forms 1099 are included in the IRS publication “2015 General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G)”. You can access the publication at: <http://www.irs.gov/pub/irs-pdf/i1099gi.pdf>.

You may be subject to a penalty of up to \$100 per incorrectly filed document, with a maximum penalty of \$1,500,000. Penalties for intentionally disregarding the requirement to file 1099s are at least \$250 per payee statement with no maximum penalty.

Taking care to prepare 1099s correctly will save both time and money. The single most common error in filing these forms is the payee name/TIN combination. When collecting information from payees, it is imperative that you ask for the name and TIN (taxpayer identification number) **exactly** as the taxpayer files their income tax return. Sole proprietors should provide the individual’s name and social security number or the owner’s name, the exact name of the business and its employer identification number. Form W-9 should be used to request this information. Take care to get the correct information. If an individual’s name is “Robert Jones” and the Form 1099 is issued to “Bob Jones”, an error notice will be sent to you. The IRS uses their computer database to match the payee name/TIN, and any deviation in the name will generate a notice.

Information returns **require** you to include your telephone number in the block provided. Failure to include it may result in penalties.

The State of Arizona does not require a state copy of the Form 1099. If you are located outside Arizona, please check with your state’s revenue/finance department to see if there is a state filing requirement.

The image shows a hand holding a magnifying glass over a Form 1099-MISC. The magnifying glass is focused on the 'Miscellaneous Income' section, which is labeled 'Form 1099-MISC'. The form itself is partially visible, showing fields for 'PAYER'S name, street address, city, state, ZIP code, and telephone no.', 'PAYER'S federal identification number', 'RECIPIENT'S identification number', 'RECIPIENT'S name', 'Street address (including apt. no.)', 'City, state, and ZIP code', and 'Account number (see instructions)'. The 'Miscellaneous Income' section is highlighted with a magnifying glass, and the text 'Miscellaneous Income' is visible within the magnified area.

FILING DUE DATES

By 2/1/2016

Mail/distribute Form 1099, copy B to recipients.

By 2/29/2016

File Form 1096, along with copy A of the 1099s with the IRS (**Please note: you must file a separate 1096 for each type of Form 1099 submitted.**)

By 3/31/2016

File Forms 1099 and 1096 **only if you file electronically.**

Due dates may vary among states that require 1099 filing. Please check with those particular states for filing deadlines and form requirements.

Online Services Provided by the IRS

- **TIN (Taxpayer Identification Number) Matching** – This free service allows payers and/or authorized agents to verify TIN and name combinations prior to filing Form 1099 (version B, DIV, INT, MISC, OID and PATR). This can alleviate some of the headache and worry when you receive a notice from the IRS stating that Form 1099-MISC was filled out incorrectly. To get started, go to <http://www.irs.gov/> and search for “e-Services”. Please note, this service is most beneficial to large businesses (over 250 information returns) as the application process can be cumbersome.
- **FIRE (Filing Information Returns Electronically) System** – This free service allows taxpayers to file certain information returns online and is required for taxpayers who need to file 250 or more returns unless a waiver is granted. The most common are Forms 1099. By using the FIRE System, you receive the benefit of saving postage and taking advantage of a later due date (for Forms 1099 - paper filing due date is February 29; electronic filing due date is March 31). In order to sign-up for this free service, you’ll need to complete and submit IRS Form 4419. The FIRE System does not support fill-in forms, so depending on the type of form being e-filed, certain software requirements need to be met. To get started, go to <http://www.irs.gov/> and search for “FIRE system”.



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Independent Contractors vs. Employees

Treating an individual as an independent contractor rather than an employee may seem like a good idea, since it would eliminate the payroll tax burden associated with an employee. However, if an individual is treated as an independent contractor and it is later discovered that they should have been treated as an employee, the employer will most likely be the party responsible for paying all of the payroll taxes.

In 2015, new guidance was issued by the U.S. Department of Labor (DOL) relating to the determination of whether a worker is an independent contractor or employee. The DOL is working with states and the IRS to ensure that workers are being correctly classified. The new determination is based on the “Economic Realities” test instead of being based only on the “Common Law Rules.” The “economic realities” test is based on a set of factors, detailed below, which when all the factors are considered will determine if the worker is economically dependent on the employer or in business for themselves.

What’s the difference between an employee and an independent contractor?

Employers need to be aware of the type of relationship that exists with the individuals they hire. Correctly classifying an individual as an independent contractor or an employee is one of the keys to avoiding unforeseen expenses. Based on the new guidance, the determination of whether a worker is an independent contractor or employee is based on whether or not the worker is economically dependent on the employer. No single factor is strong enough to determine whether or not a worker is an independent contractor, instead all factors should be considered.



What are the new Economic Reality Factors?

1. Is the work an integral part of the employer’s business? If the nature of work performed is key to the business, then it is likely that there is an economic dependence. It doesn’t matter how many workers are performing the function.
2. Does the worker’s managerial skill affect the worker’s opportunity for profit or loss? If workers are truly in business for themselves they will have control over whether they personally make a profit or have a loss beyond the work currently being performed for this employer.
3. How does the worker’s relative investment compare to the employer’s investment? This considers the degree and nature of the investment made by the worker. If the worker is making investments to grow or maintain a separate business it may favor treating them as an independent contractor.
4. Does the work performed require special skill or initiative? If the skills provided by the worker are specialized it MAY indicate that the worker is an independent contractor assuming that the worker is providing skills to multiple employers.
5. Is the relationship between the worker and the employer permanent or temporary? If the worker has a permanent relationship with the employer that would favor being an employee. However, longer projects could lead to there being an appearance of a more permanent relationship while the worker is still an independent contractor.
6. What is the nature and degree of the employer’s control? This is the closest to the “Common Law Rules,” which is how the relationship was determined prior to the new guidance. The degree of control would be based on information such as does the company control or have the right to control what the worker does and how the worker does his or her job? Or, are the business aspects of the worker’s job controlled by the payer? This includes how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.

continued on page 5

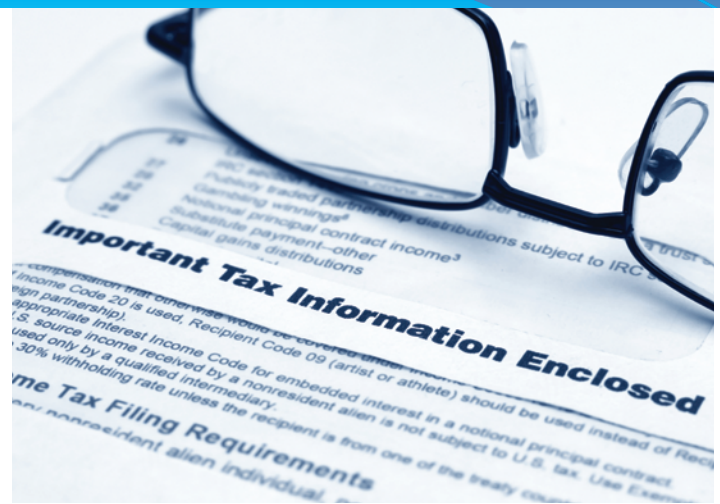
Are there any problems with treating someone as an independent contractor? Yes. If an individual is treated as an independent contractor and elects to file the two forms described below, it could potentially cost the employer more money to correct the situation than if the individual had been treated as an employee from the beginning. The potential costs include responsibility for both the employer and employee share of social security and Medicare taxes, federal withholding, unemployment taxes, preparation fees to accountants, penalties and interest. Also, if the IRS determines that the independent contractor should have been treated as an employee, the IRS could take a closer look at the employer's relationship with other independent contractors.

The IRS has two forms that may be filed to make a determination of independent contractor or employee status. These can work against a business if a worker has been classified incorrectly.

Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding", can be filed by a business prior to hiring someone to determine if the worker would qualify to be classified as an independent contractor. The form can also be filed by the individual when they feel that they should be treated as an employee rather than an independent contractor. This form allows the business and/or the individual to present the factors and reasoning behind the decision to treat an individual as an independent contractor, and the IRS will make a determination of status based on the information presented.

Form 8919, "Uncollected Social Security and Medicare Tax on Wages", is a form the individual can file with their personal income tax return, either after filing or in conjunction with filing Form SS-8. An individual who believes they were incorrectly classified as an independent contractor and files both of these forms may be excused from paying self-employment taxes by the IRS. Further, the IRS may look to the business to pay those taxes for the individual.

The IRS created a "Voluntary Classification Settlement Program" that allows employers to voluntarily



reclassify independent contractors as employees. The benefit is that this applies to future tax periods with limited federal employment tax liability for past non-employee treatment. Certain eligibility requirements apply; please contact our office for more information.

Section 530 Relief

Section 530 relieves employers from paying employment taxes on workers who were previously considered independent contractors when the IRS has determined they are employees. This relief is available if:

1. The employer had a **reasonable basis** for not treating the worker as an employee.
2. The employer was **consistent** in treating similar workers as independent contractors.
3. The employer **filed Form 1099** for the worker in the applicable years.

NOTE: This relief does not apply to Affordable Care Act legislation. For example, the independent contractor would need to be included in the employee count when determining if a business is an applicable large employer and in the calculation for any potential excise tax liability.

For more information, see Publications 15-A and 1779 on the IRS website at www.irs.gov.

Due to the much larger scope of the new guidelines, the explanations are brief by necessity. If you have any questions or concerns please contact our office and we will be happy to discuss the issues or questions.

Summary of Some Types of Compensation Requiring a 1099

| Form 1099 | Type of Compensation |
|-------------|---|
| MISC | <p>Payers use this form to report \$600 or more of rental or \$10 or more of royalty payments and payments made that are not in the ordinary course of the recipient's business.</p> <p>Owners or operators of fishing boats use this form to report all payments to crew members from the sale of catch.</p> <p>Attorneys, medical insurance programs, and health and accident insurance plans use this form to report payments of \$600 or more to a physician, physician's corporation, or other supplier of health and medical services.</p> <p>Payers use this form to report payments of \$600 or more for services performed for a trade or business by persons not treated as employees (e.g. subcontractors and directors).</p> <p>Payers use this form to report payments of \$600 or more made for legal services, regardless of whether the attorney is incorporated or not. In addition, if you make a payment to an attorney and the attorney's fee cannot be determined, the total amount paid to the attorney (gross proceeds), regardless of the amount, must be reported in box 14.</p> <p>Payees use this form to report the occurrence of direct sales of \$5,000 or more of consumer goods for resale where the purchaser does not maintain a permanent place of business.</p> <p>Brokers use this form to report total payments of at least \$10 received on behalf of a customer in lieu of dividends or tax-exempt interest as a result of the transfer of a customer's securities for use in a short sale.</p> |
| A | If, in the course of your business, you lend money and, in full or partial satisfaction of the debt, you acquire an interest in property that is security for the debt or have reason to know that the property has been abandoned, you must use this form. |
| B | <p>Brokers use this form to report sales (including short sales) of stocks, bonds, commodities, regulated futures contracts, forward contracts, and debt instruments.</p> <p>Barter exchanges use this form to report exchanges of property or services through the exchange.</p> |
| DIV | <p>Corporate payors use this form to report:</p> <ul style="list-style-type: none"> • Payments of \$10 or more in distributions, such as dividends, capital gains or non-taxable distributions that were paid in stock • Any foreign tax withheld and paid on dividends and other distributions on stock, or • Any federal income tax withheld under the backup withholding rules |
| INT | Payers use this form to report payments of \$10 or more in interest payments, including interest on bearer certificates of deposit and interest on U.S. Savings Bonds, Treasury Bills, Treasury Notes and Treasury Bonds. |
| R | Payers use this form to report payments and/or distributions of \$10 or more from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc. |
| S | Transferors use this form to report the sale or exchange of real estate. Sales handled through an escrow company will be reported by the escrow company. |

We have been seeing an increase in the number of notices being mailed out by the IRS related to 1099's. If you intentionally disregard the filing requirement or fail to provide the recipient a copy of their 1099 you will be subject to a penalty of AT LEAST \$250 with no maximum penalty. If you file late you will be subject to the amounts below depending on how late you file.

| | WITHIN 30 DAYS | MORE THAN 30 DAYS— BUT ON OR BEFORE AUGUST 1 | AFTER AUGUST 1 |
|-----------------------------------|----------------|--|----------------|
| Per Return | \$30 | \$60 | \$100 |
| Maximum | \$250,000 | \$500,000 | \$1,500,000 |
| Small Business Maximum | \$75,000 | \$200,000 | \$500,000 |

Electronic Filing Requirements

Electronic reporting regulations require all persons who expect to file **250 or more Forms W-2 or 1099** in 2016 for calendar year 2015 to file electronically. In the case of 1099s, the 250 or more requirement applies separately to each type of form. For example, if you file 275 Forms 1099-MISC and 10 Forms 1099-INT, only the Forms 1099-MISC are required to be filed electronically. Penalties for failure to file electronically, if required, are up to \$100 per form.

If you meet the electronic reporting requirements above, please contact us as soon as possible to discuss the application for, or waiver from, filing electronically.



Our 1099 Form Preparation Fee Schedule

Tier 1

You provide all 1099 information – recipient, TIN, address and amount

\$85 flat fee
plus \$7 per 1099

- Preparation of forms using our software including state copies, if applicable
- Mailing of recipient forms
- Delivery of client copies
- E-filing with the IRS and California, if applicable
- Preparation of state filing copies, if applicable

Tier 2

You provide recipient, TIN, address and confirm amounts from the list we generate

\$175 flat fee
plus \$7 per 1099

- All of the services in Tier 1, plus:
- Researching your records to identify potential recipients and amounts
- Sending you a report to fill out and/or verify the recipient's correct name, address and TIN

Tier 3

You provide your accounting records. We do the rest!

\$250 flat fee
plus \$7 per 1099

- All of the services in Tier 1, plus:
- Researching your records to identify potential recipients
- Determining the reportable amount based on your records
- Contacting recipients for their information

Due to the additional time required to sort through documents, if you have a manual system (I.E. check stubs), you are automatically considered a Tier 3 service level.

Address Service Requested

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