



# 2020 Newsletter on Forms 1099 & 1095 Reporting

## 1099-NEC Arrival in 2020:

The IRS has revived Form 1099-NEC for nonemployee compensation. Starting in 2021, for the 2020 reporting year, **Form 1099-NEC will be used to report nonemployee compensation instead of reporting on Form 1099-MISC.** Using Form 1099-NEC is part of an effort mandated by Congress in the PATH Act of 2015 to require businesses to file information returns about any non-employee compensation. A draft of this form is available on the IRS website (<https://www.irs.gov/pub/irs-dft/f1099nec--dft.pdf>).

## 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 has increased 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 the 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 card, credit card, or PayPal, 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, or through PayPal.
- 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>.

## 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](http://www.hblcpa.com)

### Internal Revenue Service:

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

A search engine for government services with links to all states:

[www.usa.gov](http://www.usa.gov)



## 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 cards, credit cards, or PayPal 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 2020 has a due date of February 1, 2021. If it is returned to you, keep it in your records until at least February 1, 2025.

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

A: Keep them for at least six 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 24%. This means that for every \$100 you owe the vendor, you will pay them \$76 and the remaining \$24 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>

**Q: What is the difference between a 1095-A, 1095-B, and 1095-C?**

A: While the forms are very similar, the main difference is who sends the form to the employee. The entity that provides the health insurance will be responsible for sending Form 1095.

- Individuals will receive a 1095-A if they were covered by a federal or state marketplace (also called an exchange).

- Individuals will receive a 1095-B if they were covered by other insurers outside the marketplace. They may also receive a 1095-B from their insurance carrier if they are enrolled in a fully-insured employer sponsored plan.
- Employees will receive a 1095-C if coverage was provided by the employer, if the employer is an “applicable large employer” (ALE), meaning they have 50 or more employees.

**Q: What information is on the Form 1095-C?**

A: There are three parts to the form:

- Employee and Employer Information (Part 1) reports information about you and your employer.
- Employee Offer and Coverage (Part 2) reports information about the coverage offered to you by your employer, the affordability of the coverage offered, and the reason why you were or were not offered coverage by your employer.
- Covered Individuals (Part 3) reports information about the individuals (including dependents) covered under your self-insured plan.

**Q: Who must file Form 1095?**

A: Every ALE and insurer that provides minimum essential coverage to an individual during a calendar year must file a Form 1095.

## Filing Due Dates

### By 2/1/2021

- Form 1099 – mail/distribute copy B to recipients
- Form 1096 with copy A of the 1099-NEC, due to the IRS via paper or electronic filing
- Forms 1095-A, 1095-B and 1095-C – due to individuals

### By 3/1/2021

- Form 1096 with copy A of the 1099s, other than Forms 1099-NEC – due to the IRS via paper filing **(Please note: you must file a separate 1096 for each type of Form 1099 submitted.)**
- Forms 1094-B, 1095-B, 1094-C and 1095-C – if filing by paper

### By 3/31/2021

- Form 1096 with copy A of the 1099s, other than Forms 1099-NEC – due to the IRS via electronic filing **(Please note: you must file a separate 1096 for each type of Form 1099 submitted.)**
- Forms 1094-B, 1095-B, 1094-C and 1095-C – if filing electronically.



## 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, K, 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. 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”.



## Independent Contractors vs. Employees

Employers who misclassify their employees as independent contractors face serious issues and consequences. Misclassified employees generate losses to both federal and state governments in the form of lower tax revenue, state unemployment insurance and worker's compensation insurance premiums. The IRS and DOL are working together to share information and establish enforcement actions to address concerns regarding employee benefits and protections that employees are entitled to such as minimum wage, overtime compensation, family and medical leave, unemployment insurance and safe workplaces. The IRS also notifies state unemployment agencies when payroll costs lack parity with contract labor and/or outside services, etc. This potential notification will result in employers being selected for a state unemployment audit.

Classifying an individual as an independent contractor rather than an employee may seem expedient, since it would eliminate the employer payroll tax burden associated with an employee wages. 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.

### What is the difference between an employee and an independent contractor?

The IRS uses a general rule that defines individuals as independent contractors if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. Employers need to be aware of the type of relationship that exists with the individuals they hire. Statutes and policies set forth by federal and state agencies should be considered when classifying individuals. It is imperative that employers understand the classification distinction in order to overcome potential legal action against misclassification by providing supportive evidence of control, factors of independence, and updated contractual records to ensure that individuals are genuine independent contractors. According to the IRS, the Common Law Rules that provide evidence of the degree of control and independence fall into three categories: Behavioral, Financial and Type of Relationship.

### What are the Common Law Rules?

1. *Behavioral* – Refers to facts that show whether there is a right to direct or control how the worker does the work. Control factors include types of instructions given, degree of instruction, evaluation systems and training.
2. *Financial* – Refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job. Control factors include significant investments, unreimbursed expenses, opportunity for profit or loss, services available to the market, and method of payment.
3. *Type of Relationship* – Refers to facts that show how the worker and business perceive their relationship to each other. Control factors include written contracts, employee benefits, permanency of the relationship, and services provided as key activity of the business.

You can visit the IRS website at <https://www.irs.gov/small-businesses-self-employed/independent-contractor-self-employed-or-employee> to get more detailed information.

***We recommend making sure the employer has a current W-9 on file for all independent contractors prior to issuing the first payment for services.***

### 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, penalties and interest, and audit representation fees to accountants. In addition, 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 has 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.

### **Arizona Department of Economic Security’s employment audits**

In Arizona, an employer can be randomly selected for an Unemployment Insurance Tax Audit at the discretion of the Arizona Department of Economic Security as a joint federal-state program authorized by Title 23, chapter 4 of the Arizona Revised Statutes in conformity with applicable provisions of the Federal Unemployment Tax Act. They will request copies of records for a specific selected audit period that will be required for the review. Record requests will include copies of cash disbursements, detailed general ledger, chart of accounts, detailed payroll journals, Form UC-018, A1-QRT, 941, 940, W-2, 1099’s, 1096, Income Tax Returns, IRS exclusion letters, financial statements and **Independent Contractor Agreements along with any paid invoices to those contractors.**

Once the audit review is complete, the Unemployment Insurance Tax Audit department will take department action which could include Employer/Employee Determination. You can be deemed as an employer of individuals

performing services subject to direction, rule or control according to A.R.S. 23-613.01, or a temporary services employer providing workers to perform services for client or customer organizations under A.R.S. 23-614. Statute A.R.S. 23-613.01 is implemented by independence and control factors detailed in the Arizona Administrative Code R6-3-1723. A.A.C. R6-3-1723 section E, is useful in detailing additional factors of control in the determination of independent contractor vs. employee such as the independent contractor’s availability to the public, compensation on job basis, realization of profit or loss, obligation, significant investment and simultaneous contacts.

The team at HBL CPAs, P.C. has experience in responding to these audits. If you have questions or need further assistance, please contact our office.

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

To read more information regarding Section 530 relief, please visit:

[https://www.irs.gov/pub/irs-utl/irpac-br\\_530\\_relief\\_-\\_appendix\\_natrm\\_paper\\_09032009.pdf](https://www.irs.gov/pub/irs-utl/irpac-br_530_relief_-_appendix_natrm_paper_09032009.pdf)

*NOTE:* This relief does not extend to the worker, who may still be liable for the employee share of FICA, not self-employment tax. Further, 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](http://www.irs.gov).

The above explanations are brief by necessity. If you have any questions or concerns please contact our office and we will be happy to discuss your questions.

## Forms 1095 / 1094 Reporting

There are 3 different types of 1095 forms. While the forms are very similar, the main difference is who sends the form to the employee. The entity that provides you with health insurance will be responsible for sending a Form 1095.

- Individuals will receive a 1095-A if they were covered by a federal or state marketplace (also called an exchange).
- Individuals will receive a 1095-B if they were covered by other insurers outside of the marketplace. They may also receive a 1095-B from their insurance carrier if they are enrolled in a fully-insured employer sponsored plan.
- Employees will receive a 1095-C if coverage was provided by the employer, if the employer is an “applicable large employer” (ALE).

IRS Forms 1094-C and 1095-C are filed by employers who are required to offer health insurance coverage to their employees under the Affordable Care Act, also known as Obamacare. The main difference between them is that the 1095-C provides information about health insurance and is sent to both employees and the IRS, while the 1094-C acts as a summary sheet for the 1095-C and is sent only to the IRS.

Form 1095 is filed by the Marketplace (1095-A), other insurers (1095-B), or by employers (1095-C). Generally, Form 1095-B is filed by insurers for individuals who get covered outside of the health insurance Marketplace.

Form 1095-C is filed by large employers. If they are self-funded, they will complete all sections of Form 1095-C. If they are fully insured, they will receive a 1095-B from the insurer and complete Sections I and II of Form 1095-C.

Employers who file Form 1095-B or Form 1095-C will also need to file Form 1094-B or Form 1094-C, respectively, and report to the IRS if they offered employees Minimum Essential Coverage (under PPACA section 6055 and section 6056).

Employers must send Form 1095-C to their employees and to the IRS. When filing forms with the IRS, employers must also include 1094-C. This form acts as a summary sheet for Form 1095-C. It provides information about:

- the employer -- including address, phone number, employer identification number (EIN)
- number of employees
- name of contact person
- number of 1095-C forms being sent

## Defining Applicable Large Employers

An applicable large employer is any company or organization that has an average of at least 50 full-time employees or full-time equivalents (FTE) over the course of the work week. For the purposes of the Affordable Care Act, a full-time employee is someone who works at least 30 hours per week.

An FTE is any collection of two or more employees whose hours, when taken together, add up to a full-time workload of 30 hours per week. Two employees who each work 15 hours per week would represent one full-time equivalent, as would three 10-hour-per-week workers ( $3 \times 10 = 30$  hours per week = 1 FTE).

Applicable large employers must offer their full-time employees the opportunity to enroll in a health insurance plan that provides minimum essential coverage. If they don't, they may be subject to a “shared responsibility payment,” also called a Section 4980H penalty, after the section of the tax code that authorizes it.

The amount of the penalty payment depends on several factors, including how many employees an employer has and how long it went without offering minimal essential coverage -- all year, for example, or just a portion of the year.

***Employers with 250 or more forms must transmit the information electronically.***

***\*\* The IRS also modified the threshold for the required electronic filing of most information returns, such as Forms W-2 and 1099. The threshold remains at 250 or more forms filed for the tax year 2020, but drops to 100 forms in tax year 2021, and 10 forms in tax year 2022.***

***If you file 1095s late you will be subject to the penalty amounts below depending on how late you file.***

1095 Penalties	Failure to file a correct information return (1095-B)	Failure to provide a correct payee statement (1095-C)
Per Form	\$280	\$280
Maximum	\$3,392,000	\$3,392,000



## 1099 Forms

The instructions for filing Forms 1099 are included in the IRS publication “2020 General Instructions for Certain Information Returns (Forms 1096, 1097, 1098, 1099, 3921, 3922, 5498, and W-2G)”. You can access the publication at: <http://www.irs.gov/pub/irs-pdf/i1099gi.pdf>.

The amount of the penalty is based on when you file the correct information return. The penalty is as follows.

- \$50 per information return if you correctly file within 30 days (by March 30 if the due date is February 28); maximum penalty \$565,000 per year (\$197,500 for small businesses).
- \$110 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$1,696,000 per year (\$565,000 for small businesses).
- \$280 per information return if you file after August 1 or you do not file required information returns; maximum penalty \$3,392,000 per year (\$1,130,500 for small businesses).
- At least, \$560 per information return with no maximum penalty for failure to file a correct information return due to intentional disregard of the filing.

**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 with the exception of the Form 1099-R, which is required to file a state copy. If you are located outside Arizona, please check with your state’s revenue/finance department to see if there is a state filing requirement.



## Electronic Filing Requirements

Electronic reporting regulations require all persons who expect to file **250 or more Forms W-2 or 1099** in 2021 for calendar year 2020 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 \$280 per form.

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



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## Summary of Some Types of Compensation Requiring a 1099

### Form 1099:

### Type of Compensation

MISC	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.	Box: 1, 2 & 3
MISC	Owners or operators of fishing boats use this form to report all payments to crew members from the sale of catch.	Box 5
MISC	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.	Box: 6
NEC	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).	Box 1
NEC	Payers use this form to report payments of \$600 or more made for legal services, regardless of whether the attorney is incorporated or not.	Box 1
MISC	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 10.	Box: 10
MISC	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.	Box: 7
MISC	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.	Box: 8
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	Brokers use this form to report sales (including short sales) of stocks, bonds, commodities, regulated futures contracts, forward contracts, and debt instruments. Barter exchanges use this form to report exchanges of property or services through the exchange.	
DIV	Corporate payors use this form to report: <ul style="list-style-type: none"><li>• Payments of \$10 or more in distributions, such as dividends, capital gains or non-taxable distributions that were paid in stock</li><li>• Any foreign tax withheld and paid on dividends and other distributions on stock, or</li><li>• Any federal income tax withheld under the backup withholding rules</li><li>• Payments of \$600 or more as part of a liquidation</li></ul>	
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.	

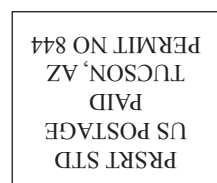


## Our Form 1099 Preparation Fee Schedule

We have changed our Form 1099 reporting services due to time constraints and to keep costs down. We are offering two levels of service. Should you need additional services beyond those offered, please contact us.

Tier Level	Pricing	Our Services Provided
Tier I:  You provide all 1099 information – recipient, TIN, address and amount	\$110 flat fee plus \$10 per 1099	<ul style="list-style-type: none"> <li>• Preparation of forms using our software including state copies, if applicable</li> <li>• Make 3 attempts to contact you for filing approval</li> <li>• Mailing of recipient forms</li> <li>• Delivery of client copies</li> <li>• E-filing with the IRS and California, if applicable</li> <li>• Preparation of state filing copies, if applicable</li> </ul>
Tier II:  You provide recipient, TIN, address and confirm amounts from the list we generate	\$215 flat fee plus \$10 per 1099	<ul style="list-style-type: none"> <li>• All of the services in Tier I, plus:</li> <li>• Provide you with a tool to determine who may receive a 1099 and amounts to include in 1099</li> <li>• Sending you a report to fill out and/or verify the recipient's correct name, address and TIN</li> <li>• Make 3 attempts to contact you for the reporting information</li> </ul>

Address Service Requested



5470 E. Broadway Blvd.  
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