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Employer Responsibility

(as of 1/2018)

This is a brief summary of your company's responsibility for classifying workers and reporting 1099's. This responsibility begins with properly classifying all workers as either employees or independent contractors. We recommend that you seek qualified legal counsel to assist you in determining and documenting the proper classification of your workers. This determination involves much more than simply accounting for payments to these workers and deciding to send them W-2's (as employees) or 1099MISC's (as contractors). This determination directly affects the workers' status in other areas such as worker's comp insurance coverage, unemployment benefits, participation in the company's qualified retirement plans, Equal Opportunity Employment laws, etc. This determination should not be understated.

The CPA's role may be to assist in the interpretation of the IRS guidelines but we are not in a position to determine and interpret the many legal factors that need to be considered. It is the company's responsibility to determine the appropriate status of their workers as they bear the burdens of any noncompliance. The CPA can assist in preparing the 1099 forms after the company determines which workers should be treated as independent contractors.

Form 1099-MISC Filing Requirements

A separate Form 1099-MISC, (Miscellaneous Income) is used to report the total payments to each non-corporate recipient to whom you have made payments in the course of your trade or business totaling more than \$600 in a calendar year. There are over 18 different types of payments that are reported on this form, some of these include:

- Rents paid to a landlord (box 1)
- Payments to contractors for services, including materials and expenses (box7) -
Federal and State income taxes withheld, if any

Payments made directly to corporations are exempt from 1099-MISC reporting requirements as are payments to vendors for the purchase of materials. However, there is an exception for payments to attorneys that requires a form 1099-MISC regardless of whether the attorney is incorporated. The IRS requires form 1099-MISC to report payments for services totaling more than \$600 made to individuals or unincorporated businesses. There is no exception allowed for payments to individuals who say they are associated with a Corporation. To avoid the 1099 reporting requirement DO NOT prepare checks made payable to the individuals personally if they are providing services under a Corporation. Instead, you must make the checks payable to their Corporation, or the individual must get a 1099. The payments should be made payable to the name shown on the form W-9 that you are required to get from each worker.

The form 1099-MISC reporting requirements dictate that for each Sole Proprietor or single member LLC you must include the individual's name, the trade name used for doing business (if any), their Social Security number, address, total amount of payments, and any withholding taxes. For partnerships and attorneys working through a corporation the 1099 should reflect the name of the entity and the entity's federal identification number. It may be very difficult to obtain the required information from your contractors after the fact. We strongly advise that you require each contractor to provide a filled in form W-9 prior to making any payments to the contractor. The information on the Form W-9 is necessary in order to properly prepare the related form 1099-MISC, and to determine if one is required.

The IRS requirements dictate that you must obtain Form W-9 from all vendors/payees to whom you will make payments for services. The Form W-9 must be kept on file to substantiate the information used to correctly prepare the 1099's. You should obtain the Form W-9 from each vendor/payee before sending them the first payment in order to motivate them to comply with your request for this information.

Form 1099-MISC Filing Instructions

These instructions cover how to prepare and file paper copies of your 1099 forms. You may also submit 1099's electronically, but you will need special software to file them electronically.

The IRS requires originals of form 1099-MISC Copy A (in red ink) which must be accompanied with an original transmittal Form 1096 (in red ink). These must be sent to the recipients and to the IRS by the same due date, and must be postmarked no later than January 31st each year. Check for the appropriate mailing address in the form's instructions.

Each recipient must receive a Copy B (black and white) by January 31st each year. Mail these to their last known address.

Under old law the recipient copies were due by January 31st and the IRS originals were due by February 28th. For 2017 forms, these due dates are no longer applicable.

Be sure to keep copies of all 1096's, 1099's, and the related W-9 forms for at least seven years.

Penalties

You should know the IRS imposes penalties which vary depending on the number of forms and how late they are filed, if at all. These penalties apply if forms are filed late, filed with incorrect or missing information, or not filed at all. It is important to note that the IRS provides some relief for payroll tax penalties if 1099 reporting has been timely filed and the IRS later determines the workers should have been classified as employees. The IRS penalties are shown on the table below.

The following is from the IRS website and shows the penalties for “small” employers. There is a different table of penalties for employers with gross receipts over \$5 million. Please see the IRS website in the link below for more details about specific filing requirements.

Small Businesses with Gross Receipts \$5 Million or Less

(*Average annual gross receipts for the most recent 3 taxable years) IRC 6721 & IRC 6722)

Time returns filed/furnished	Due 01-01-16 thru 12-31-2016 (inflation adjusted)	Due 01-01-17 thru 12-31-2017 (inflation adjusted)	Due 01-01-18 thru 12-31-2018 (inflation adjusted)
Not more than 30 days late	\$50 per return/ \$185,000 maximum	\$50 per return/ \$186,000 maximum	\$50 per return/ \$187,500 maximum
31 days late – August 1	\$100 per return/ \$529,500 maximum	\$100 per return/ \$532,000 maximum	\$100 per return/ \$536,000 maximum
After August 1 or Not At All	\$260* per return/ \$1,059,500 maximum	\$260 per return/ \$1,064,000 maximum	\$260 per return/ \$1,072,500 maximum
Intentional Disregard	\$520 per return/ No limitation	\$530 per return/ No limitation	\$530 per return/ No limitation

As mentioned above, the penalties related to noncompliance with the 1099 reporting requirements can be significant. However, there are other consequences associated with the misclassification of workers which may incur far more economic damage to your company. Please keep in mind that simply reporting payments on 1099 forms may not protect you from all of the potential damages that could be awarded to your misclassified workers.

We hope you found the information provided in this brief summary informative and useful. Please note that this summary is not all inclusive and you should get legal and professional advice about your situation. Call us if you have any questions about how the IRS reporting requirements relate to your business. You can find free references and 1099 filing instructions on the IRS website at www.IRS.gov. Please be mindful that knowing the IRS filing instructions is not all there is to properly determining a worker’s status.

Sincerely,

Brad Borncamp, CPA, LLC