



December 2018

Dear Business Owners and Managers OR Client OR Organization Leaders:

INCREASED 1099 PENALTIES:

Congress has gotten serious about not issuing 1099's. In prior years the penalty for not issuing a 1099 was \$50 per return. In past years the IRS didn't even assess the penalty if filed late. For **2018** in many cases the penalty could be as much as \$1,000 per each omitted or incorrect 1099-MISC. A 1099-MISC is required whenever you pay a non-corporate entity \$600 or more in one year in business transactions. The 1099-MISC must be provided to the taxpayer by **January 31, 2019** and **this year the IRS' copy must also be provided by January 31, 2019** or those penalties will apply. The problem you may encounter is those sub-contractors that don't want you to issue them one, so make sure you get them to fill out a W-9 form before you issue them a payment. If the contractor says you don't have to issue him/her one, yet has you make the check payable in his/her name, get a Form W-9 signed BEFORE you hand them the check. Form W-9 is easily accessed on the IRS home page at www.irs.gov. Make sure you issue the 1099's to every possible vendor or service provider!

INFORMATION RETURNS:

Information returns, or Forms 1099, are required annually to be filed with the Internal Revenue Service (IRS). These forms are required to be given to the recipients by January 31. We strongly recommend your compliance due to the increased activity in payroll and compensation audits by various government agencies; and IRS efforts to minimize fraudulent return filings. Beginning with the 2011 filing season, your annual business tax return includes questions such as, "are you required to file 1099s" and "did you file 1099s". You sign these annual returns, stating that all information is accurate to the best of your knowledge. A "No" answer to either of these questions, could certainly generate additional correspondence or inquiry. Possibly a step leading to secure an "intentional disregard" case to charge \$1,000 penalty per information return. Listed below are common payments reported on Form 1099.

Form 1099-MISC – Due to recipient AND IRS by January 31

A Form 1099-MISC must be filed for each person (defined as a non-incorporated entity which includes most LLCs), that you have paid at least \$10 in royalties or broker payments, or at least \$600 for the following:

- 1) Rent expense – real estate, office space, machine rental, etc.
- 2) Prizes and awards that are not for services rendered.
- 3) Non-employee compensation, including fees to **subcontractors** or directors, commissions, travel allowances to non-employees, and other forms of compensation for services rendered for your trade or business by an individual who is not your employee. **By supplying us with information to be reported as non-employee compensation on Form 1099-MISC, you are verifying that the payee is deemed to be an independent contractor and is not an employee of the Company.** See www.irs.gov Publication 1779 and Publication 15-A (pages 4-7) for additional guidance or contact our office.
- 4) Wages or other compensation for services performed by a former deceased employee and paid to the estate or person entitled to receive payment of the employee.
- 5) A barter exchange (non-cash) of services between individuals in the course of their trade or business. The amount reportable is the fair market value of the services rendered.
- 6) Total deferrals during the year from all non-qualified deferred compensation plans subject to the provisions of Section 409A.

Generally, Forms 1099 are not required for payments made to a corporation, except for payments to physicians, or other suppliers of medical or health services.

Payments of \$600 or more made to attorneys are reportable on Form 1099-MISC whether or not the recipient is incorporated.

Payments for merchandise or payments which are not made in the course of your trade or business, i.e. personal items, do not need to be reported on a Form 1099.

Form 1099-DIV or 1099-INT – Due to recipient by January 31, Due to IRS by February 28

Payments of \$10 or more to any person or non-incorporated entity for interest or dividends are reportable. If your company is making loan payments to an individual, a Form 1099 probably needs to be filed.

Form 1098: Mortgage Interest Statement – Due to recipient by January 31, Due to IRS by February 28

Use Form 1098 to report mortgage interest or mortgage insurance premiums of \$600 or more received by you during the year in the course of your trade or business from an individual.

Form 1099-R: Distribution from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. – Due to recipient by January 31, Due to IRS by February 28

Distributions from pensions, profit-sharing, and retirement programs (including a designated Roth account under a section 401(k) plan) of \$10 or more should be reported on Form 1099R. You should verify that your plan administrator or investment custodian is properly preparing these forms.

Back-up Withholding for Incorrect Taxpayer Identification Number (TIN)

Penalties apply for each failure to file a timely return and each failure to furnish recipient's TIN. If a recipient fails to furnish a payer with a correct TIN, the payer is required to withhold 28 percent of the payment. The IRS will be contacting payers to whom this requirement may apply.

Penalty Information (General Rules)

Two separate penalties apply to information returns: 1) Penalties for failure to file correct information returns and 2) Penalties for failure to furnish correct payee statements. For example, if you fail to file a correct Form 1099-MISC with the IRS and don't provide a correct Form 1099-MISC statement to the payee, you may be subject to two separate penalties. When combined with "intentional disregard" of the rules, the total penalty per 1099-MISC per recipient can be \$1,060.

The general penalties for failure to file by the due date are 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; maximum penalty \$186,000 per year for small businesses, defined below.
- \$100 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$532,000 per year for small businesses.
- \$260 per information return if you file after August 1 or you do not file required information returns; maximum penalty \$1,064,000 per year for small businesses.
- \$530 per information return if intentional disregard of filing or correct information requirements; no limitation.

You are a small business if your average annual gross receipts for the 3 most recent tax years are \$5million or less. If you do not meet this, the maximum penalties are triple the amounts above.

As with most IRS rules and requirements there are exceptions and safe harbors discussed fully in IRS General Instructions for Certain Information Returns.

Please provide us with a list of your information return recipients and amounts by January 16th to ensure these filing requirements are met. If we can be of any assistance in preparing this information, please contact us. Visit our website at www.ensigncpagroup.com.

Sincerely,

Ensign CPA Group Inc.

ENSIGN CPA GROUP INC.