

(revised January 21, 2019)

Trade or Business Activity Requires Issuance of Forms 1099

All activities that rise to the level of a U.S. trade or business must provide and file Form 1099-MISC annually. This memo provides an overview of some of the important rules surrounding Form 1099-MISC.

A. Who

A taxpayer must issue a Form 1099-MISC to each person to whom the taxpayer paid at least \$600 during the tax year for:

- rent,
- nonemployee services, including contractors, repair and maintenance persons, and most accountants (including our Firm), and persons providing a taxpayer with services combined with a good (e.g. a flooring installer who also provides the flooring material as part of the price),
- providers of equipment and the equipment operator,
- moving companies (who are not corporations) providing labor and trucks,
- non-corporate storage companies renting the taxpayer space,
- all payments for legal services and gross proceeds paid to attorneys, no matter the lawyer's type of business or corporate organization (unless the payment meets an exception below),
- commissions paid to insurance agents (not insurance companies) and brokers (that are not corporations),
- other income to the recipient, such as prizes, awards, nonemployee bonuses and benefits, and other payments .

It is important to note that consumer sales of tangible items such as furniture or appliances of at least \$5,000, where the purchaser does not have a permanent establishment, require the issuance of Form 1099-MISC.

In addition to the transactions described above, a taxpayer must also issue Form 1099-MISC to persons that are subject to back-up withholding in all instances, regardless of the amount paid.

There are several transactions where the taxpayer is not required to issue Form 1099-MISC. No reporting is required in the case of payments to:

- most LLCs treated as corporations, S-corporations and C-corporations,
- licensed real estate agents or property managers (e.g., leasing or sales commissions),
- attorneys providing settlement agent services, providing insurance and claimant services, or holding funds in trust (until such funds are released), and
- governmental entities.

The taxpayer is not required to issue Form 1099-MISC if the taxpayer, or the taxpayer's agent, has already issued a 1099-K for payments made by credit card. However, Form 1099-MISC is still required if the payment was made by debit card, cash, check, wire, bit coin, etc. If you are unsure whether you meet an exception, we recommend the issuance of Form 1099-MISC.

B. What

Form 1099-MISC has a number of boxes. For example; Box 1 for rents, Box 7 for nonemployee compensation, Box 9 for sales of consumer products of \$5,000 or more, and Box 14 for payments to attorneys. In order to prepare Form 1099-MISC, the taxpayer is required to maintain an accounting of payments, and though not technically required but strongly recommended, to obtain a current, complete and signed Forms W-9 from service providers. Form 1099-MISC must be provided to the service provider, a copy must be filed with the government, and the taxpayer should retain a copy (we recommend for seven years).

C. When

There are two deadlines for submission of Form 1099-MISC to service providers and the government: January 31, for any items reported in Box 7 – nonemployee compensation, and February 28, for all other items reported on Form 1099-MISC. There are various penalties for not issuing and filing Form 1099-MISC timely.

D. How

To get started, as stated above, two important tasks must be accomplished:

- Obtain a complete and signed Form W-9 from each service provider. We recommend that you obtain Form W-9 from each and every vendor (including corporations) before making payment to them. Forms W-9 are readily available and almost all businesses routinely provide them. The Form W-9 is your “get out of jail free card”. You may generally rely on information within a complete and signed Form W-9 to issue your Form 1099-MISC. Form W-9 contains routine information such as name, address, type of entity and the service provider’s taxpayer identification number. Importantly, Form W-9 contains representations as to foreign status and whether back-up withholding is required by you. If you do not obtain Form W-9, reasonable steps must be taken to obtain the information. Finally, once a Form W-9 is received, you must take reasonable steps to safe-guard the provider’s information.
- Determine an accounting of the amounts paid. As you correctly assumed, you must add up all the payments made to each service provider during the year and enter that number in the appropriate box(es) on Form 1099-MISC. The general rule is that you report gross amounts paid, which include materials and supplies paid, sales taxes paid, freight, etc.

The requirements to issue Form 1099-MISC can be complex and confusing. Please contact us if you need assistance with preparing and filing Form 1099-MISC for your business.

