

## Form 1099 Requirements

This letter is intended to be a guide for you as you gather the necessary information to prepare your 1099 Forms for 2023. Please refer to Internal Revenue Service *Instructions for Forms 1099, 1098, 5498, and W-2G* for specific instructions. This letter focuses on the Internal Revenue Service 1099 filing requirements.

### General Information

Most 1099 Forms must be filed with the Internal Revenue Service by February 28, 2024 (April 1, 2024 if filing electronically). The independent contractor 1099-NEC forms must be filed by January 31, 2024, along with Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*. Submit a separate Form 1096 for each type of 1099 information return you file. Additionally, you are required to furnish statements to recipients containing the information furnished to the IRS by January 31, 2024. Forms 1099-B, 1099-S, and 1099-MISC (only if you are reporting payments in boxes 8 or 10) must be furnished by February 15, 2024. You are required to include the telephone number of a contact person on the statements to the recipients. Use Form W-9, *Request for Taxpayer Identification Number and Certification*, to obtain necessary information from the recipient.

### Who Must File

Any person or entity engaged in a trade or business, including the rental of property, must provide the appropriate form for payments made to any individual or non-corporate entity. The most commonly used forms are:

<u>Form</u>	<u>Description</u>	<u>Minimum Dollar Requirement</u>
<b>1099-DIV</b>	Dividends and Distributions	\$10 or more, except \$600 or more for liquidation
<b>1099-INT</b>	Interest Income	\$10 or more
<b>1099-MISC</b>	Miscellaneous Information	\$600 or more, \$10 or more for royalties
<b>1099-NEC</b>	Non-employee Compensation	\$600 or more
<b>1099-R</b>	Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs	\$10 or more
<b>1099-S</b>	Proceeds from Real Estate Transactions	Generally, \$600 or more
<b>1098</b>	Mortgage Interest Statement	\$600 or more

## Special Notes Regarding 1099-NEC

The 1099-NEC was designed for Non-employee Compensation and replaced the old box 7 on form 1099-MISC. There are a number of special rules for the filing of Form 1099-NEC. Please consult with us if you have a specific question. Form 1099-NEC is required to be filed for an *aggregate* of payments totaling \$600 or more in a calendar year for services provided by an individual or non-corporate entity.

Non-employee compensation includes all services performed by an independent contractor or non-corporate entity even if the payment includes parts and materials as well as labor. Reimbursements for travel for which the nonemployee did not account to the payer, must also be included. Services from board of directors who are not treated as employees are reported on form 1099-NEC as well. Note: the exemption from reporting payments made to corporations does not apply to payments for legal services. Therefore, you must report attorneys' fees for corporations as well. When preparing a 1099 for a sole proprietor using a social security number, list their name first then their company dba name.

Payments made with a credit card or payment card and certain other types of payments, including third party network transactions are not subject to reporting on Form 1099-NEC since these are reported separately on Form 1099-K by the payment settlement entity.

The 1099-NEC filing requirements also pertain to real estate professionals or those in a rental trade or business claiming the qualified business income (QBI deduction) who manage their own rental properties. If you own and manage rental properties and claim real estate professional status, be sure to track the total amount paid to any individual or non-corporate entity in the *aggregate* (rather than what was paid to such individual or non-corporate entity on a rental property-by-rental property basis).

Other common transactions are still required to be reported on Form 1099-MISC and include:

1. gross proceeds paid to attorneys (including corporations) \$600 or more, reportable in box 10;
2. payments for deceased employees payable to the estate or beneficiary, reportable in box 3;
3. rent payments for \$600 or more paid to non-corporate landlords, reportable in box 1; and,
4. prizes and awards of \$600 or more that are not for services, and not payable to employees, reportable in box 3.

If you have been notified by the IRS of 1099s previously filed with improper or missing taxpayer identification numbers and will issue subsequent 1099 information to the same person (or non-corporate entity), you must ensure that the taxpayer identification number is correct and complete in order to meet the requirements concerning notification (to the recipient). If you file a subsequent 1099 for the same person (or non-corporate entity) without correcting the previously incorrect taxpayer identification number, you may be liable for penalties (amounts could also be disallowed for your tax return reporting purposes potentially causing your income tax to increase).

## Penalties

There are a number of penalties associated with the failure to timely file the required 1099 forms. There are also penalties of \$60 to \$310 per document imposed on payers who fail to furnish the proper information or fail to furnish a copy of the 1099 to the recipient by January 31, 2024. The maximum penalty is \$3,783,000 (\$1,261,000 for small businesses). For intentional disregard of the requirements, the penalty is at least \$630 per payee statement, with no maximum. In addition, employers filing 10 or more information returns of any type (combined 1099s and/or W-2s), must file electronically, unless granted a waiver by the IRS. Care should be taken to properly and correctly file the required forms timely to avoid unnecessary, nondeductible penalties.

## Backup Withholding

Interest, dividends, rents, royalties, non-employee compensation, commissions, and certain other payments (including broker and barter exchange transactions, and reportable gross proceeds paid to attorneys) may be subject to backup withholding at a 24% rate. Use Form 945, *Annual Return of Withheld Federal Income Tax*, to report backup withholding. Additionally, Forms 945-A, *Annual Record of Federal Tax Liability*, and 945-V, *Form 945 Payment Voucher* are required to be filed with Form 945.

Federal backup withholding at a 24% rate is required on all above reportable payments if:

1. The payee fails to furnish the taxpayer identification number (TIN) to the payer;
2. For interest, dividend, broker and barter exchange accounts opened or instruments acquired after 1983, the payee fails to certify, under penalties of perjury, that his or her taxpayer identification number provided is correct;
3. The IRS notifies the payer to impose backup withholding because the payee furnished an incorrect taxpayer identification number;
4. For interest and dividend accounts or instruments, the payer is notified that the payee is subject to backup withholding (under IRC §3406(a)(1)(C));
5. Under IRC §3406(a)(1)(D) interest and dividend accounts opened or instruments acquired after 1983, if the payee fails to certify, under penalties of perjury, that he or she is not subject to backup withholding under 4. (above); or,
6. Foreign financial institutions making payments to US non-exempt recipients who are recalcitrant account holders or the requesting payee.

## Form DE 542

The State of California Employment Development Department (EDD) has a separate reporting requirement for payments made to independent contractors. Any payer required to file form 1099-MISC or 1099-NEC for services provided by an independent contractor must file Form DE 542 with the EDD within 20 days of either making payments totaling \$600 or more or entering into a contract for \$600 or more in any calendar year, whichever is earlier. The purpose of this requirement is to enable EDD to increase child support collection by helping to locate parents who are delinquent in their child support obligations. The Form DE542 can be faxed to 916-319-4410 or mailed to: Employment Development Department, P.O. Box 997350, MIC 96, Sacramento, CA 95899-7350.

We appreciate the opportunity to serve your business needs. If you have any questions or would like further clarification or assistance, please call us.