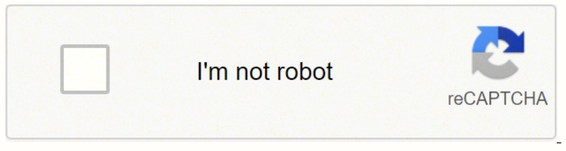

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Is a partnership subject to 1099 reporting

(updated 2/9/2022) Over the past few years, there have been a number of changes and updates regarding the reporting rules for the mysterious 1099 Forms. I say “mysterious” because many business owners simply guess as to what the rules are and oftentimes get exasperated and just give up choosing to file nothing at all. This can be a very dangerous move and result in penalties that can add up very quickly. The penalties for not filing 1099s can add up quickly and vary from $50 to $110 per Form depending on how long past the deadline the company issues them. In fact, if a business intentionally disregards the requirement to provide a correct payee statement, it is subject to a minimum penalty of $550 per statement, with no maximum (More on this below). So now, that I hopefully have your attention. Let me break down the basics and make a couple of recommendations on how you can take care of your 1099s. The New Form and Name Changes and Deadlines The biggest change from last year and many don’t know about it is the introduction of a new Form called 1099-NEC Non-Employee Compensation. Also, the title and purpose of Form 1099-MISC has been changed from Miscellaneous Income to Miscellaneous Information. 1099-NEC. Businesses will now file Form 1099-NEC for each person in the course of the payor’s business to whom they paid at least $600 during the year. This payment would have been for services performed by a person or company who IS NOT the payor’s employee. (Instructions to Form 1099-NEC) 1099-MISC. Other payments over $600 that a payer makes in the course of the payer’s business for things such as rent, prizes, and awards, or “other income payments” are reported on Form 1099-MISC. The “general rule” is that business owners must issue a Form 1099-NEC to each person to whom they have paid at least $600 in rents, services (including parts and materials), prizes and awards, or other income payments. You don’t need to issue 1099s for payment made for personal purposes. You are required to issue 1099-NEC reports only for payments you made in the course of your trade or business. Also, don’t forget other 1099 Forms that might apply to you as a business owner or investor. I provided the links to the instructions for these other types of Form 1099s. 1099-INT. This is the tax form used to report interest income, paid by all ‘payers’ of interest income to investors or private lenders at year-end (1099-INT Instructions). 1099-DIV. This Form is typically used by large banks and other financial institutions to report dividends and other distributions to taxpayers and to the IRS, If you own and operate a C-Corporation with shareholders, this would be the Form to report payments to those investors (1099-DIV Instructions). 1099-R. This Form is used to report the distributions of retirement benefits such as pensions and annuities. Also, if you take distributions from a self-directed IRA or 401k, you would receive some type of Form 1099-R. (1099-R Instructions). Here are the Basics about 1099s you should know as a Business Owner Who are you required to send a Form 1099-NEC? You are required to send Form 1099-NEC to vendors or sub-contractors during the normal course of business you paid more than $600, and that includes any individual, partnership, Limited Liability Company (LLC), Limited Partnership (LP), or Estate. Who are considered Vendors or Sub-Contractors? Essentially, this is a person or company you have paid for services that aren’t an employee. If you aren’t sure if your worker is an Employee or Sub-Contractor see my article: “The Difference between Sub-Contractors and Employees” What are the exceptions? The list is fairly lengthy, but the most common is that you don’t need to send a 1099-NEC to: Vendors operating as S or C-Corporations (you’ll find their status out when you get a W-9…see below) LLCs or partnerships (ONLY if they are taxed as an S or C-Corp…again see the W-9 below) Sellers of merchandise, freight, storage or similar items. Payments of rent to or through real estate agents (typically property managers). However, keep in mind you need to issue a 1099 to a landlord you are paying rent, unless they meet another exception. Don’t worry about credit card payments and PayPal. The IRS allows taxpayers to exclude from Form 1099-NEC any payments you made by credit card, debit card, gift card, or third-party payment network such as PayPal. (These payments are being reported by the card issuers and third-party payment networks on Form 1099-K.) However, Venmo is a different animal. If business owners are using Venmo to pay vendors from time to time, they need o make sure and include these payments in their ‘books’ and determine if they’ve paid a Vendor more than $600. Venmo does not take care of the 1099 for you. The business owner is responsible to issue the proper 1099 to those paid through Venmo. Lawyers get the short end of the stick. Ironically, the government doesn’t trust that lawyers will report all of their income, so even if your lawyer is ‘incorporated’, you are still required to send them a Form 1099 if you paid them more than $600. The W-9 is your “best friend”. Some of you may be frustrated that you don’t have the information you NEED to issue Form 1099. One of the smartest procedures a business owner can implement is to request a W-9 from any vendor you expect to pay more than $600 before you pay them. Using this as a normal business practice will give you the vendor’s mailing information, Tax ID number, and also require them to indicate if they are a corporation or not (saving you the headache of sending them a 1099 next year). You can download a W-9 here. The procedure. Regrettably, you CANNOT simply go to www.irs.gov and download a bunch of 1099 Forms and send them out to your vendors before the deadline. The form is “pre-printed” in triplicate by the IRS. Thus, you have to order the Forms from the IRS, pick them up at an IRS service center, or hopefully grab them while supplies last from the post office or some other outlet. Deadline to Payees. Taxpayers are required to issue and mail out all Forms 1099-NEC, 1099-MISC, 1099-DIV, 1099-INT, and 1099-R (to those who they paid more than $600 in 2020) by no later than January 31st. Deadline to Send the IRS Form 1099-NEC…This is a new rule- Take note!! Now business owners have to compile all of their 1099-NEC forms and send the accompanying 1096 and MAIL them to the IRS, OR file them ELECTRONICALLY with the IRS by January 31st as well (NOT the end of February- the old rule). Also, depending on state law, you may also have to file the 1099-NEC with the state. Sounds like fun…right? (This is where delegating the task to your accountant really comes in helpful). Deadlines to send the IRS all other Form 1099s. For Forms 1099-MISC, 1099-DIV, 1099-INT, and 1099-R, business owners have to compile all of the 1099s and MAIL them (if you choose to use MAIL) to the IRS with a Form 1096 by February 28th. IF you want to file ELECTRONICALLY, you can gather all of the same documents and file them electronically by March 31st. Don’t forget the States (sorry). And add insult to injury, there are a number of states that have filing requirements for form 1099 and especially 1099-NEC. Currently, these states require you to file a 1099-NEC with them – CA, DE, HI, KS, MA, MT, NJ, OH, OK, OR, PA, RI, VT, and WI. Make sure to confirm the rules and deadlines if you’re operating in a State where this is required. MUST I file Electronically? IF you have more 250 Form 1099s to file, you MUST file electronically. If you are required to do so, and fail to comply, and don’t have an approved waiver, you may be subject to a penalty of up to $100 per return for failure to file electronically unless you establish reasonable cause. Now you can still ‘choose’ to file electronically if you have less than 250 Forms and it’s easier for you. However, you can file up to 250 returns on paper; those returns will not be subject to a penalty for failure to file electronically. What about foreign workers? Also, if you hire a non-U.S. citizen who performs any work inside the United States, you would need to issue them a Form 1099-NEC. If they are not a citizen AND perform all of their work outside the U.S., you are not required to issue a 1099-NEC. However, It is your responsibility to verify that the worker (1) is indeed a non-U.S. citizen, and (2) performed all work inside or outside the United States. For that purpose, in the future you might want to have that foreign worker fill out, sign, and return to you Form W-8BEN. Suggested Procedure for 2022: Moving forward this year, make sure to get a Form W-9 from all your vendors before they can get paid. If they want to get paid ‘under the table’…tell them to move to another country and tell you “Thank you for paying taxes and providing roads for me and national defense!!” Getting a W-9 from them will ensure your ultimate tax-write off and certainly save you a lot of headaches next January so you don’t have to track down their mailing addresses or EINs. (See here the Instructions for the W-9). What are the Penalties if I miss a Deadline? As I mentioned above, penalties for not filing a correct 1099 can add up quickly and vary from $50 to $110 per Form depending on how long past the deadline. Moreover, if the IRS can prove that a business intentionally disregarded the requirement to provide a correct payee statement, they are subject to a minimum penalty of $550 per statement, with no maximum! Don’t ignore the 1099 or the process and get with your CPA to make sure to meet the appropriate deadlines. The maximum penalty can easily exceed $1M for small businesses in 2022 and interest WILL be charged on those penalties. In all cases, the IRS considers you to be a small business if you’ve earned an average of $5 million or less in annual revenue for the past three tax years…AND there is no limit on the penalties for the intentional disregard to file (and don’t think ignorence is a defense)! Real-life story. I literally had a prior client contact me this past year because they chose to file their 1099s on their own and didn’t carefully follow the rules. They inadvertently mailed in the forms and didn’t electronically file (see rules below regarding electronic filing). RESULT- The IRS hit them with $17,000 in penalties and our only hope was to show reasonable cause to get them out of the penalty. ** UPDATE…months later we were able to help them get out of the penalty…but only after a lot of time and tears shed. If you are already late in filing your forms…you have a big decision to make (think of “The Rock” in the movie ‘The Rundown’ if you haven’t seen it- a classic): Option (a) – Suck it up and hurry and file…BUT keep in mind, IF this is your first time being late and you can show any sort of reasonable cause, the penalty could be waived. I’m not making any promises here…but it’s fairly common the first-time offenders get more mild treatment….again- generally. Option (b) – The IRS will make you pay. So…essentially not filing and hoping the IRS or the State doesn’t audit you. Not good for sound sleep at night and when you go through the pearly gates someday. There is no Option (c) – A quote from the Movie Finally, be careful trusting websites just to save just a few dollars. It can cost you big time if you miss even a small rule or procedure. Most accountants have an affordable procedure to assist in the filing and can be a huge resource. Business owners need to take this filing process seriously and take personal accountability to make sure they get completed. Shop around, but as you do just know our fee at Kohler & Eyre CPAs is $50 for the 1096 and $5.00 per 1099 before January 31st and $10.00 per 1099 after the deadline…so it doesn’t have to be that expensive. If you need support or have questions please contact Maxwell Rodgers in our office for this service at 435-865-5866 or email him directly at . Additional Resources * To sign up for Mark’s weekly Free E-Newsletter and receive his Free E-Book “The Top 10 Best Tax Saving Secrets Everyone Should Know” visit www.markjkohler.com. Mark J. Kohler is a CPA, Attorney, co-host of the Podcast “Main Street Business Podcast” and author of the new book “The Tax and Legal Playbook- Game Changing Solutions For Your Small Business Questions, 2nd Edition”. the “8 Steps to Start and Grow Your Business Workbook”, and “The Business Owner’s Guide to Financial Freedom- What Wall Street isn’t Telling You”. He is also a senior partner at the law firm Kyler Kohler Ostermiller & Sorensen, LLP, and the accounting firm K&E CPAs, LLP.

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