

January 29, 2018

To Our Valued Clients and Friends:

Please allow us to take this opportunity to address with you an often over-looked area of business tax compliance which is the area of 1099 reporting. 1099 reporting has been the subject of increased scrutiny by the Internal Revenue Service over the last couple of years. In conjunction with this increased scrutiny, questions were added back in 2011 to all business tax returns (1120, 1120S, 1065, etc.) inquiring as to whether the taxpayer made any payments that would require Form(s) 1099 to be filed and if so, were the required Form(s) 1099 actually filed?

What types of payments require Form(s) 1099 to be filed?

For purposes of this discussion, we are going to focus on Form 1099-MISC as it is one of if not the most common Form 1099 required of small businesses. The Form 1099-MISC reports several types of miscellaneous income including payments of \$600 or more for:

- services performed by someone other than your employee.
- Rents
- prizes and awards;
- other income payments;
- medical and health care payments;
- crop insurance proceeds;
- cash payments for fish (or other aquatic life) you purchase from anyone engaged in the trade or business of catching fish;
- generally, the cash paid from a notional principal contract to an individual, partnership, or estate;
- payments to an attorney; or
- any fishing boat proceeds,

In addition, Form 1099-MISC must also be used to report direct sales of \$5,000 or more of consumer products for resale to a buyer who does not have a permanent retail establishment.

When is form 1099-MISC due?

Form 1099-MISC must be sent to the recipient by January 31, 2018. Form(s) 1099-MISC also must be filed either via paper or electronically by January 31, 2018 as well.

What information is required to file?

In addition to the recipient's name, address and amount paid, you will also need the recipient's Taxpayer Identification Number or (TIN). A Taxpayer Identification Number is the either the Taxpayer's Social Security Number or Employer Identification Number, depending on the type of entity. If you do not already have the recipient's Taxpayer Identification Number, you can request it by sending the vendor IRS Form W-9 – "Request For Taxpayer Identification

Number.” We recommend as a “best practice” to send a W-9 requesting a Taxpayer Identification to all vendors.

What if I do not have the Taxpayer Identification Number?

If a vendor fails to provide the requested Taxpayer Identification Number, the Taxpayer may be required to withhold 28% of the gross amount due to the vendor in the form of “Back-Up Withholding.”

What are the consequences of failing to collect and remit Back-Up Withholding?

While the failure-to-file penalties related to Form(s) 1099 can certainly be substantial, the penalties related to the failure to collect and remit required Back-Up Withholding are even more severe. **If it is determined that a Taxpayer should have taken out Back-Up Withholding from a vendor’s payments and failed to do so, the penalty is equal to the 28% percent that should have been withheld.**

*****Other consequences of failing to collect and remit Back-Up Withholding*****

If it is determined that a Taxpayer failed to collect and remit Back-Up Withholding, a Taxpayer may avoid being charged the 28% percent Back-Up Withholding if it can provide proof that the vendors subject to the Back-Up Withholding included the income in question on their tax returns. **HOWEVER, PLEASE NOTE THAT EVEN IF A TAXPAYER IS ABLE TO PROVIDE PROOF THAT THE VENDOR INCLUDED THE INCOME IN QUESTION ON THEIR TAX RETURNS, THE TAXPAYER MAY STILL BE HELD LIABLE FOR BOTH THE PENALTIES AND INTEREST ACCRUED ON THE BACK-UP WITHHOLDING THAT SHOULD HAVE BEEN WITHHELD.**

What are the consequences of not filing required Form(s) 1099?

The penalty for failure-to-file Form(s) 1099 is \$50 per unfiled return. **If it is determined that the failure-to-file was due to intentional disregard on behalf of the Taxpayer, the penalty increases to the greater of \$100 per return or 10% of the total amount that was neglected to be reported.**

We believe that 1099 reporting will continue to be an area of tax compliance subjected to increased scrutiny by the Internal Revenue Service. If you would like more details about 1099 reporting and how it could possibly relate to your business, please do not hesitate to contact us.

Very truly yours,

Rainer & Company