



LINDENBUSCH
ACCOUNTING & TAX SERVICE, INC.
1099 MISCELLANEOUS ALERT

Dear Client;

According to our records your 2016 income tax returned contained either a Schedule “C”, “E”, “F” or Form 4835 (Farm Rental). The “Sole Proprietor”, the “Rental”, the “Farm” and Form 4835 farm rental ALL have the potential for a labor paid out deduction. These four forms ask two questions:

1. Are you required to prepare and send out Form 1099-Misc?
2. Did you send out Form 1099-Misc?

The IRS penalties for NOT complying with the 1099 mandates have exploded. Effective January 1, 2016 non-filing, late filing, and corrected late filing penalties are based on the size of the **company** disregarding the IRS mandate AND a percentage of the amount of underpayment (not to exceed 20% per worker) of income and self employment tax that the worker failed to report/pay. These penalties are gigantic, are adjusted for inflation and can reach **hundreds of thousands of dollars** depending on the size of your business. For more information look at the IRS website, www.irs.gov. Type in the search box “penalties for 1099’s” then click on “increase in information return penalties.”

Also, the preparer penalties for leaving the ABOVE two questions unanswered or answered fraudulently have exploded as well. Our office **will not** leave these two questions blank. We will answer honestly with the best feedback and information from you.

A 1099-Misc with box 7 “nonemployee compensation” is due to every worker (subcontractor) you hire that reaches \$600 in a calendar year. All 1099’s are to be sent to the worker (subcontractor) by January 31st and to the IRS by February 28th. The worker must provide for you his/her full name, current address, and either social security number or federal ID number. The worker should preferably do this on a signed IRS Form W-9 which you will keep in your files. You can get the W-9 from the IRS website’s (www.irs.gov) homepage or you can go to the hyperlink on our website (www.lindenbuschtaxservice.com).

If you decide to prepare your own 1099’s we need to know this so that we can answer the dual questions above. If you want our office to prepare them, we will need the most current W-9 (the name and address could change year by year). We will also need your name, address and ID # so that we can file the 1096 transmittal (recap) of all Form 1099’s. We will need the workers W-9 (or information from the W-9 written legibly) and the dollar amount of the years compensation either mailed, hand delivered, faxed or emailed to us. Our preparation fee for 2018 (2017 1099’s) will be \$25 for one 1099 and \$10 for each worker after that. The earlier in January we receive the information the better. 1099’s prepared after February 1, 2018 will cost more.

See reverse side for EMPLOYEE VS INDEPENDENT CONTRACTOR

EMPLOYEE VS INDEPENDENT CONTRACTOR

The misclassification of worker compensation is also reaping much larger penalties. In the past it has been on a case by case facts and circumstances basis but the Tax Courts and the IRS have codified a number of criteria that distinguish an employee (W-2) from independent contractor (1099 misc). The Tax Court considers seven factors:

1. The degree of the firm's (or person's) control over the worker
2. The worker's investment in work facilities
3. Profit or loss potential for the worker
4. The degree of ease with which the firm or person can discharge the worker
5. The degree of integration of the worker's services to the firm's (or person's) principal function
6. The temporary or permanent nature of the relationship
7. The parties' understanding of the nature of their relationship

In Revenue Ruling 87-41 there is a RIGHT TO CONTROL "Twenty Factor" test which is an IRS guide that taxpayers should also consider along with the above Tax Court factors.

RIGHT-TO-CONTROL TEST

A worker is an employee for federal employment tax purposes if the worker qualifies as an employee under common law. Under common law, an employer-employee relationship exists when the firm or person for whom the worker performs the services has the **right to control and direct the worker in how the worker performs the services**. Right to control refers to the degree of control over the means and details of the worker's tasks. Such control is the hallmark of an employer-employee relationship. It is not necessary for the employer to actually exercise this control. Merely having the right to control the worker is sufficient to conclude that the worker is an employee and not an independent contractor.

You can peruse these 20 criteria for determining worker status by going to our website and clicking on the hyperlink called RIGHT TO CONTROL "Twenty Factor Test" under the useful tax information section. Understand that each question will be weighted differently by the IRS.