

THE INDEPENDENT CONTRACTOR VS. EMPLOYEE ISSUE AND THE RELATED REPORTING REQUIREMENTS

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SECTION ONE

Independent Contractor vs. Employee Overview

A business subjects itself a large quantity of legal obligations when it hires an employee. There are significant responsibilities for complying with a tremendous number of sometimes contradictory laws put in place by federal, state and local governments. Here is a partial listing of requirements which the employer finds themselves subject to:

- minimum wage and overtime requirements of both state and federal governments.
- withholding and remitting and reporting federal income taxes
- withholding and remitting and reporting social security and Medicare taxes.
- withholding and remitting and reporting state income taxes
- must comply with state and federal anti discrimination laws.
- must accommodate certain disabilities
- must give time off to vote
- must give time off for jury duty
- must give time off to have a baby or care for sick parents.
- must provide workers compensation coverage and pay premiums.
- must report and pay state and federal unemployment taxes.
- must comply with various OSHA requirements.
- may have special requirements form their liability insurance carrier.
- may have demands from employees for vacation time, sick time, and personal time off.

- may have demands from employees that they pay for health care benefits, vision care, dental care, life insurance, supplemental benefits, 401K plans, health reimbursement plans, child care reimbursement plans....the list just goes on and on.

So having employees has significant costs to the employer in addition to just the hourly rate of pay for the employee. Not just in dollars, but also in time to do the required reporting and the increased risks associated with having employees. It is no wonder that businesses look for other options to get work done. It may be a viable option at times to outsource some of the activities the business needs accomplished to other businesses. There are businesses which make a good income providing services to other business so that they do not have to deal with the hassles and costs of having employees or as many employees.

The employer may also have the opportunity to hire independent contractors instead of employees and reduce the costs associated with getting the work done as well as time requirements. This can work well for the business as long as the independent contractors really are independent contractors. If they are not independent contractors, the risks can be even higher than for employees. If the IRS comes in and reclassifies independent contractors as employees, the back taxes and penalties that can be assessed can easily become so burdensome as to put an organization out of business. If an independent contractor is injured and files for workers compensation, then there could be a workers compensation investigation launched and workers compensation could reclassify independent contractors as employees causing back workers compensation premiums and potentially increased premiums for the future. An independent contractor can also file for unemployment benefits causing the state labor department to open an investigation.

What we are going to do in this section is identify what employees are and what independent contractors are as well as what the reasons to have one or the other are. We will then discuss the factors used most commonly to compare employees and independent contractors in order assist in identifying which one an individual worker is. We are going to concentrate on the factors used by the IRS because they are the most common and they are very all encompassing. They usually yield a reasonably accurate result and most of the time if the result goes one way or the other using the IRS factors, then the result will be similar with other agencies. You must still be aware that there can be situations where different governmental agencies get different results when determining if someone is an independent contractor or an employee.

What is an Employee?

An employee contributes time and labor to the activities of an organization. Employees are usually hired to do specific duties and often have job descriptions. Payment to employees is most often made as a specific amount per hour worked, although employees can be paid salaries or paid via a piece rate.

For federal employment tax purposes, an individual is an employee if they meet the requirements set out in three sections of the Employment Tax Regulations. These sections are 31.3121(d)-1(c); 31.3306(i)-1; and 31.3401(c)-1. These sections provide basically that an employer-employee relationship exists when the organization or person for whom the work is performed has the right to control and direct the individual who performs the services. It is not necessary for the employer to direct and control the work; it is only required that they have the right to exercise such control. These sections also provide that if an employer-employee relationship exists, it makes no difference if the employer and employee describe the relationship as, or have agreements to treat the relationship as an independent contractor relationship.

What is an independent Contractor?

An independent contractor provides goods or services to another business on terms determined by a written or oral contract. Generally payment to an independent contractor is made by the job with little regard for the time involved in accomplishing the work. Independent contractors may perform services that are not in the general course of business of the organizations which hire them.

The same Employment tax regulations referred to above provide that those individuals who hold themselves out to the public as offering services to the public and follow an independent trade, business or profession are generally not employees, but are independent contractors. Examples of independent trades which would fall in this category are physicians, lawyers, dentists, contractors, and accountants.

The primary determination of worker classification is the common law standard. Common law flows chiefly from court decisions and suggests that treatment of a worker as an independent contractor or an employee is a function of the legal definitions developed in the law of agency - whether one party, the principal, is legally responsible for the acts or omissions of another party, the agent, and depends on the principal's right to direct and control the agent.

The government agencies use a variety of factors which will be discussed shortly to determine if the worker is subject to the will and control of the company, not only as to what work shall be done, but also how it shall be done.

Advantages/Disadvantages

Advantages of hiring independent contractors.

- You could save money by not having to pay benefits, taxes and not having a full time employee when you do not need them.
- Staffing flexibility. You can hire for specific skills as well as specific needs and times.
- Potential reduction in exposure to lawsuits by spreading liability to others.
- Potential for flat fees to help control costs of projects.
- You may be able to get extended terms for payment.
- Independent contractors do not generally attempt to form unions.
- Generally no discrimination issues.

Disadvantages of hiring independent contractors.

- Less control over your workers.
- Individuals actually performing doing work may vary.
- Right to fire depends on your written agreement.
- You may not own copyrights or works created by an independent contractor.
- Risk of government audits from IRS, labor boards, OSHA or others.
- The independent contractor may not understand your business or needs as fully as an employee who works in house.
- Independent contractor may lack loyalty to your organization.
- Higher risk regarding confidentiality and privacy issues.
- An injured independent contractor may not be covered by workers compensation creating investigations and potential liability in that area.

Advantages of being an independent contractor.

- Since independent contractors are generally not tied to an employer, they are free to set their own rules of business limited only by bargaining power.
- The loss of one or two clients can have a significant effect on the livelihood of the independent contractor unless they develop a reasonably large network of clients.
- Gives you the opportunity to be your own boss, not answer to a supervisor and potentially unlimited earnings.
- Gives you the opportunity to build and lead an organization.
- You can duplicate your efforts by teaching others to do your work and get more accomplished.
- Allows the creator of a work to copyright or patent ownership rather than the employer owning the created work.
- Do not have to be concerned with petty office politics. At least not as much.
- You may be paid more than an employee would for similar work.
- You have the opportunity to take increased business deductions, possibly an office in home deduction and vehicle deductions you would likely be unable to take as an employee.
- You can set your own prices.
- More flexible work schedules.
- May be able to work at home.
- May be able to work part time.
- You may be able to put more money in tax deferred retirement accounts.

Disadvantages of being an independent contractor.

- You have no job security.
- You might not get paid.
- You must pay self employment taxes.
- You may be personally liable for business debts.
- You have no employer provided benefits
- You have no unemployment insurance benefits
- You have no employer provided workers' compensation.
- You have few labor law protections.
- You must maintain more bookkeeping records.
- You must file a more complex income tax return, maybe multiple returns.
- You must make estimated income tax payments quarterly.
- You may have to file sales tax returns.
- You must keep accurate mileage records.
- You may have to hire employees and deal with the record keeping requirements and petty employee problems.
- You may have to deal with the payroll reporting requirements, workers compensation reporting, and unemployment tax reporting.

- You must market yourself as well as get the work done.
- You can make bad decisions and lose money.
- You may have increased liability insurance costs.
- You will need additional bank account(s).
- You may have more difficulty getting loans.
- You may have to deal with OSHA.
- You may have to invest significant amounts of money in tools, equipment, facilities or inventory.

Liability of Employee Misclassification

Each taxing agency has its own liability of misclassification. Generally the two primary agencies will be the IRS for federally mandated taxes and the state labor department.

Federal:

If the Internal Revenue Service finds that the misclassification is intentional an employer will be required to pay the full portion (employer and employee share) of FICA taxes. The employer may not recover nor deduct any of the FICA tax from the employee.

In addition to FICA taxes the IRS will collect Federal Unemployment taxes from the employer. Penalties and interest for late tax payments will also be charged.

State:

The liability to the employer for misclassification varies by state. For purposes of this report we will look at the state of Colorado. House Bill HB09-1310 added additional employer requirements as well as increasing penalties. The new notification requirement alerts employees and contractors of their right to file a complaint and the requirement of the Colorado Department of Labor and Employment to accept complaints and conduct investigations. Also changed was an increase to the penalties charged to employers. Employers are now required to pay all back taxes owed with interest plus penalties of \$5,000 for each misclassification for the first offence and up to \$25,000 for each misclassification for a second or subsequent offence.

Memorandum of understanding

Additional warning to employers: the agencies are talking to each other! Late last year (2011), the IRS and United States Department of Labor (DOL) entered into a Memorandum of Understanding (MOU).

This MOU sets forth an agreement to share information, resources and enforcement between the agencies. Specific objectives defined by the MOU include:

- Expand the IRS-DOL partnership launched in the Questionable Employment Tax Practices program
- Reduce the employment tax portion of the tax gap
- Increase compliance with federal employment and unemployment tax requirements
- Increase compliance with federal labor laws enforced by the DOL
- Reduce fraudulent filings
- Reduce abusive employment/unemployment tax schemes
- Reduce worker misclassification
- Reduce questionable employment tax practices
- Work together to create educational and outreach materials and guidance for employers and workers

Additionally, as of the writing of this report, 13 state agencies have signed an agreement with the USDOL to join the MOU. The state of Colorado is one of these 13 states. The IRS, USDOL and CDLE have all agreed to share information and resources to battle employee misclassification.

IRS Factors

The factors the IRS uses to determine if an individual is an independent contractor or employee are the most commonly used factors, although other governmental organizations sometimes look at other factors or look at them from a different perspective and can come up with different results from the IRS. Because the IRS factors are most common, cover the broadest territory, and are most widely used as well as because they overlap into the factors used by other organizations, we are going to spend some time looking at them here.

The IRS looks at three aspects of the employment arrangement in order to analyze if a particular situation involves an independent contractor or an employment relationship. These three aspects are:

1. Financial control.
2. Behavioral control.
3. Relationship of the parties.

Financial control refers to the rights the business has to control financial aspects of the workers job. These include the extent to which the company reimburses or does not reimburse expenses; the extent of the workers investment in the work; the extent the worker makes his services available to others in the marketplace; how the worker is paid and the extent to which the worker can realize a profit or a loss in the activity. We often refer to much of this as the workers risk of loss. In general an employee has no risk of loss and an independent contractor does have a risk that they could lose money on the work.

Behavioral control refers to the control the business has over the manner in which the work is done. This involves how much control the business has over the training; how much instruction is given regarding how the work is accomplished and the hours the work is accomplished.

The relationship of the parties refers largely to how the business and worker interact. It involves facts regarding the activities of the business and the worker which indicate how their interactions are both perceived and what they are in reality. Do they act like two separate businesses or do they act like employer and employee?

The IRS does have a total of twenty different factors which are used in assisting to determine the status of an individual worker. None of the twenty factors are determinative. Some of them hold more weight than others and the amount of weight an individual factor holds will vary with the circumstances of each individual situation and the job being done. There is no magic number of factors whereby if you get a over half or a certain number, you win. It is very dependent upon the facts and circumstances of each individual situation. Each individual factor will tend to indicate that a worker may be more likely and employee or an independent contractor. They must be looked at in their entirety to determine what the real substance of the situation is. In some situations other factors may be considered as well depending on the facts and circumstances of those particular situations.

These 20 factors were originally developed by the IRS in 1987 based on the results of various cases and rulings and are listed here as described by the Joint Committee on Taxation for a public hearing on worker classification on May 8, 2007. We will describe each factor as the Joint Committee on Taxation described them as well as add additional information.

1. Instructions: If the person for whom the services are performed has the right to require compliance with instructions, this indicates employee status. As we have mentioned in other places, if the right exists there is an indication of employee status regardless of if that right is exercised. If the employee is required to comply with the instructions of someone else, this indicates an employee.

2. Training: Worker training (requiring attendance at training sessions) indicates that the person for whom services are performed wants the services performed in a particular manner-which indicates employee status. Training can include requiring an experienced employee to work with the worker, corresponding with the worker, requiring them to attend meetings or training sessions or other methods. In some work situations there may be requirements such as federal safety requirements which are placed by an organization outside the organization for which the work is being performed. In this case, requiring the worker to undergo that training may not in and of itself indicate employee status.
3. Integration: Integration of the worker's services into the business operations of the person for whom services are performed is an indication of employee status. This is generally because it shows that the worker is subject to direction and control.
4. Services rendered personally: If the services are required to be performed personally, this is an indication that the person for whom services are performed is interested in the methods used to accomplish the work as well as the results, which indicates employee status.
5. Hiring, supervision, and paying assistants: If the person for whom services are performed hires, supervises or pays assistants, this generally indicates employee status. However, if the worker hires and supervises others under a contract pursuant to which the worker agrees to provide material and labor and is only responsible for the result, this indicates independent contractor status.
6. Continuing relationship: A continuing relationship between the worker and the person for whom the services are performed indicates employee status. It is possible that a continuing relationship can exist even where work is performed for inconsistent time periods as long as it is frequently recurring.

7. Set hours of work: the establishment of set hours for the worker indicates employee status.
Setting hours is the exercise of control.
8. Full time required: If the worker must devote substantially full time to the business of the person for whom services are performed, this indicates employee status. If the organization exerts significant control over the workers' ability to do other gainful work, this indicates control. An independent contractor is free to work when and for whom he or she chooses.
9. Doing work on employer's premises: If the work is performed on the premises of the person for whom the services are performed, this indicates employee status, especially if the work could be done elsewhere. Work done off-site such as at the office of the worker indicates freedom from control. How important this factor is can depend on the nature of the work and if the employers generally would require that an employee perform similar services at the employers' premises. Control over the place of work is indicated when the employer has the right to compel the worker to travel a designated work site, work in specific locations, or be in certain locations in certain time periods.
10. Order or sequence test: If a worker must perform services in the order or sequence set by the person for whom services are performed, that shows the worker is not free to follow his or her own pattern of work, and indicates employee status. Again, the right to control the order or sequence is what is important. The employer does not have to exercise that right.
11. Oral or written reports: A requirement that the worker submit regular reports indicates employee status.
12. Payment by the hour, week, or month: Payment by the hour, week, or month generally points to employee status; payment by the job or a commission indicates independent contractor status.

13. Payment of business and or traveling expenses: If the person for whom the services are performed pays expenses, this indicates employee status. An employer, to control expenses, generally retains the right to direct the worker.
14. Furnishing tools and materials: the provision of significant tools and materials to the worker indicates employee status.
15. Significant investment: Investment in the facilities used by the worker indicates independent contractor status. Lack of such investments indicates a dependence on the organization for whom the work is performed indicating an employer-employee relationship.
16. Realization of profit or loss: A worker who can realize a profit or suffer a loss as a result of the services, in addition to profit or loss ordinarily realized by employees, is generally an independent contractor. The risk that the organization may not pay for the services does not constitute a sufficient economic risk to support treatment as an independent contractor.
17. Working for more than one firm at a time: If a worker performs more than de minimis services for multiple firms at the same time, that generally indicates independent contractor status. It is possible for an individual to work for multiple organizations and be an employee of each of those organizations.
18. Making service available to the general public: If a worker makes his or her services available to the public on a regular and consistent basis, that indicates independent contractor status.
19. Right to discharge: the right to discharge a worker is a factor indicating that the worker is an employee. The threat of dismissal is an element of control belonging to an employer. An independent contractor cannot be fired as long as the independent contractor does not break the terms of the contract.

20. Right to terminate: If a worker has the right to terminate the relationship with the person for whom services are performed at any time he or she wishes without incurring liability, that indicates employee status.

Following are 3 charts showing the 3 categories of factors and how they indicate employee or independent contractor status:

FINANCIAL FACTORS	FACTOR	EMPLOYEE INDICATIONS	INDEPENDENT CONTRACTOR INDICATIONS
1	Hiring, supervising and paying assistants	Employees tend not to be responsible for the hiring process. Employees do not pay the assistants.	Independent Contractors have the responsibility of hiring their own assistants and paying them as it becomes necessary to meet the requirements of the contract.
2	Payment by Hour, Week Month, or other	An employee is generally paid by the hour, week or month	An independent contractor is generally paid by the job or receives a commission
3	Realization of Profit or Loss	An employee is unable to realize a profit or a loss based on the quality of the work or timeliness the work is performed.	An independent contractor can make more or less money depending on the efficiency of the work performed.
4	Tools and Materials	An employee does not provide the tools they use or the materials required to finish a product	Independent contractors provide their own tools and materials
5	Expense reimbursement	An employee does not pay for expenses or is reimbursed for them if they are incurred in the performance of the job	An independent contractor pays their own expenses as part of the performance of the contract
6	Significant Investment	An employee does not invest money in the facility and equipment necessary to perform the job.	An independent contractor purchases or rents its own equipment and facilities.

BEHAVIORAL FACTORS	FACTOR	EMPLOYEE INDICATIONS	INDEPENDENT CONTRACTOR INDICATIONS
7	Oral or Written Reports	An employee tends to be required to make reports to his employer in some fashion.	An independent contractor is generally not required to make any form of report, but there may be provisions in the contract requiring progress reports or some form of reporting.
8	Doing work on employer's premises	An employee performs the job requirements on premises , particularly if the work could be performed elsewhere.	An independent contractor is not required to perform work in any specific location, although the nature of the work could limit the locations where the independent contractor could perform the work.
9	Set hours of work	An employee's hours are set by the employer	An independent contractor has control over the hours worked and can perform the duties at any time.
10	Full-Time	An employee may have other outside employment limited by the employer and cannot be limited by their employer regarding where they may work	An independent contractor is free to work for whoever he chooses and whenever he chooses to do so. He may work part time or full time as he determines necessary to accomplish the contract.
11	Order or sequence	An employee is often given a set order or sequence in which to perform the tasks of the job and generally cannot change this order.	An independent contractor is not required to perform the tasks necessary to accomplish the requirements of the contract in any particular order or sequence
12	Instructions	An employee is generally told when and where to work and given instructions about how to accomplish work	An independent contractor does not have to comply with any specific instructions regarding how, when or where how to accomplish work.
13	Training	An employee may have specific training activities they must participate in as a job requirement.	An independent contractor does not receive training nor is he required to undergo training provided by the organization the work is being performed for
14	Services rendered personally	An employee must personally render the services required for the job	An independent contractor is generally not required to personally render services. He may have his own employees or hire other independent contractors to render the services.
15	Integration	An employee works with other employees	An independent contractor works without the involvement of the employees who work at the business, or at least without their significant involvement.

RELATIONSHIP FACTORS	FACTOR	EMPLOYEE INDICATIONS	INDEPENDENT CONTRACTOR INDICATIONS
16	Right to discharge	An employee may be let go at any time or reason subject to any employment contract or legal limits	An independent contractor cannot be "fired" without failing to observe the requirements of the contract
17	Right to terminate	An employee is free to quit at any time, subject to an employment contract limiting this right	An independent contractor cannot quit without fulfilling the requirements of the contract which may have terms required for terminating the contract
18	Making service available to the general public	An employee does not generally work for multiple organizations	An independent contractor offers his work to other organizations
19	Working for more than one organization at a time	An employee generally works only for one employer at a time.	An independent contractor has the ability to work for multiple other organizations at one time.
20	Continuing relationship	An employee has a continuing relationship with the employer	An independent contractor generally ends the relationship with the organization when the contract is completed.

Court Factors

During 2012 there were 3 court cases decided regarding the independent contractor vs. employee issue. These cases are a good opportunity to compare to each other and see how the courts actually applied the various “factors” to a real situation. In each case the IRS had determined using their 20 factor tests that the workers were employees. In each case, the judges said twenty is too many factors to work with and whittled it down to seven or eight factors.

Atlantic Coast Masonry. T. C. Memo 2012.233 August 13, 2012

Atlantic Coast Masonry hired workers on a per job basis. The workers brought their own tools and equipment. They were paid based on the amount of work accomplished (bricks laid). They were paid in cash. Atlantic Coast Masonry maintained cash logs. Masons and other workers were let go when the job was completed. They could be fired at will. There were no written contracts. Atlantic Coast Masonry failed to file income tax returns, employment tax returns, or information returns (1099's). The court compared the seven factors they used as follows:

1. Degree of Control. Atlantic told the employees where and when to work including the specific hours to work. They were paid weekly rather than upon completion of the job. While the workers were skilled and did not require supervision, there was a supervisor on site and Atlantic failed to prove it did not have the right to control the work. The court determined that this degree of control indicated employees.
2. Investment in Facilities. The workers provided their own tools, but not their own facilities. The court determined that the workers had no significant investment in facilities. The court did not consider the workers using their own tools to be a significant consideration. Therefore, the court determined this factor was not important and did not consider it.

3. Risk of loss. The workers had none as far as the court was concerned; therefore, this indicated an employee.
4. Right to discharge. Atlantic could fire the workers at any time so the court thought this indicated employee status.
5. Part of the regular business of the company. The court determined that this was Atlantic's line of business and the workers were important to getting the business accomplished so this indicated employee status.
6. Permanence of relationship. Workers were let go at the end of a specific job and they were free to go work elsewhere, therefore this is the only factor the court though weighted in favor of independent contractor status.
7. Relationship the parties believed they were creating. There was no documentation. The court determined that since they had nothing in writing to indicate what the parties believed at the time, there was no use for this factor in their analysis. The lesson from this factor is to put everything in writing.

The court determined based on the above analysis that the workers were employees. It should also be important to note that lack of adequate written records and the lack of timely filed tax returns both likely worked against the company.

Keller/Action Auto Body. TCM 2012-62

John and David Keller owned Action Auto Body. Repair technicians, painters and mechanics as well as three office/janitorial workers were paid as independent contractors. Workers set their own hours and chose their own work. They were paid solely by commission and were free to obtain some of their own work.

The court once again used the same seven factors as the previous case but added one extra factor as follows:

1. Degree of control. Action argued that they did not have any control over the work done. The workers had specialized skills and worked their own schedules. Action was able to show that in the case of the body workers, they had no control over the means used to accomplish the work or when the work was accomplished, and this factor weighed in favor of independent contractor status. The court said it weighed “heavily” in favor of independent contractor. In the case of the 3 office/janitorial workers the record was “sparse” on the ability to control their actions the court felt that Action had the ability to control their work.
2. Investment in facilities. The workers provided their own small tools, but Action provided heavy tools such as sprayers and lift equipment. The court found it unconvincing that the office workers provided their own equipment. The court found that this factor indicated an employer-employee relationship.
3. Risk of Loss. The court found this factor neutral in the case of the auto workers because payment by commission is consistent with either an employee or independent contractor situation and the workers risk of loss was minimal. Although the workers were able to bring in their own work, Action was responsible for finding most of the work. This factor was in favor of employee status for the 3 office workers.
4. Right to discharge. The workers could be discharged by Action at any time and for any reason. This factor indicated employee status.
5. Integral part of business. Even though Action was in the business of auto body work, the court felt that the main activity of Action was to estimate repairs, then refer vehicles to the workers for repairs. Action could survive and continue the repair work without the workers if they were to leave, although at a lower volume. The court therefore found this factor to be neutral.

6. Permanency of the relationship. The court felt that this factor carried very little weight as it thought both employees and independent contractors could be discharged at will.
7. Relationship the parties thought they were creating. The court felt that everyone involved clearly thought they had created an independent contractor relationship.
8. Provision of employee benefits. No employee benefits were provided. The court thought this factor weighted in favor of independent contractor status.

The court determined that the auto body repair workers were independent contractors and the other three workers were employees and Action was liable for employment taxes on those three. The court also determined that Action was not eligible for section 530 safe harbor relief because Action had not timely filed forms 1099.

Dean Cibotti/Liberty Mortgage. TCS 2012-21.

Dean Cibotti owned 33.3% of Liberty Mortgage. He was named president because he had the largest ownership share. Liberty did not provide him an office. He worked at home or at client offices or at closing locations. He was compensated solely by commission.

The court used eight factors again as follows:

1. Degree of Control. Cibotti did not control Liberty Mortgage even though he was the largest individual shareholder. Liberty exercised no supervision over the means by which Cibotti sold mortgages. The court found this factor indicates independent contractor status.
2. Taxpayer investment in facilities. While the court said a home office does not constitute sufficient basis for independent contractor status it is consistent with independent contractor

status. Liberty did not provide an office. The fact that Cibotti claimed a deduction for home office expenses helped indicate independent contractor status.

3. Opportunity for profit and loss. Cibotti was paid a percentage of loans he closed. At some point, Liberty unilaterally changed the percentage paid. This factor indicates independent contractor status according to the court.
4. Permanency of relationship. The court found no records containing an agreement, but since Cibotti was paid for at least three years and was a partial owner, it appeared to the court that he had a permanent relationship with Liberty and indicative of employee status.
5. Right to discharge. There was no indication of a right to discharge therefore the court said this factor did not indicate either employee or independent contractor status.
6. Part of regular business. The business of Liberty Mortgage was the sale of mortgage loans. This indicates employee status.
7. Relationship the parties believed they were creating. Due to a lack of clear records and inconsistencies in treatment (some years a W-2 and 1099 were both issued), it was not clear to the court what relationship the parties believed they were creating.
8. Provision of employee benefits. No benefits were provided, so the court felt this indicated independent contractor status.

The court determined that these factors indicted that Cibotti was an independent contractor, therefore was entitled to deduct business expenses on his schedule C of his individual income tax return to the extent that such expenses were substantiated.

Safe Harbors

If an organization has treated individuals as independent contractors and lets the IRS make the determination that those individuals are employees, the potential fines and penalties are significant. Code section 530 of the Revenue act of 1978 provides the taxpayer with some relief in this situation. If certain requirements are met, the employer (not the worker) can get relief from employment tax liability under Internal Revenue Code Section C along with any interest or penalties attributable to the liability for those employment taxes. This relief would apply to FICA (Federal Insurance Contributions Act or Social Security and Medicare withholding taxes), FUTA (Federal Unemployment Tax Act) taxes, Federal income tax withholding, and RRTA (Railroad Retirement Tax Act).

To obtain this relief, there are three requirements and all three must be met:

1. Reasonable Basis.
2. Substantive Consistency.
3. Reporting Consistency.

1. Reasonable basis. The employer must have a reasonable basis for the incorrect treatment of the employee as an independent contractor. Reasonable basis includes three areas described as "safe havens". Falling into one of these safe havens will qualify the employer for the reasonable basis requirement, but remember that once qualified here, they must also meet the other two requirements.

The first reasonable basis "safe haven" is Judicial Precedent or published rulings. The business must be able to show that it relied on a particular judicial precedent or published ruling. The facts of that case must be similar to the situation of the business. The facts do not have to be identical and do not have to deal with precisely the same industry, but must be similar. The ruling must have been in existence at

the time the business began treating the workers as independent contractors. One case is sufficient even if there are other cases which support a different conclusion. This can include relying on technical advice from an expert (attorney or CPA) and that advice should be in writing and include reference to a court case supporting the position. If relying on technical advice, it would be in the best interests of the business to be aware of the qualifications of the advisor to advise in this particular area. The taxpayer must be acting "reasonably" when they follow the advice of a professional.

The Second reasonable basis "safe haven" is a prior Internal Revenue Service examination of the taxpayer. The audit must have included an examination of the books and records of the organization and the IRS audit must have included an examination for employment tax purposes of the status of the class of workers at issue or a substantially similar class of workers. The examination must have been of the organization, not the worker. This prior audit can only be relied on for periods after the audit took place.

The third and final reasonable basis "safe haven" is a long standing recognized industry practice. This is probably the most difficult safe haven argument and the argument which is used the most. To claim the industry practice safe haven, the practice must be long-standing. IRC Section 530(e)(2)(C) provides that practices which began before 1978 may be long-standing and practices which have existed more than 10 years are long-standing. A shorter period may be long-standing depending on the facts and circumstances. The practice must have been an industry practice prior to the time the business joined the industry. The business cannot rely on former industry practices if the industry practices changed prior to the business joining the industry. The business must reasonably show that they relied on the industry practice most likely from its knowledge or communications with competitors or individuals knowledgeable about the industry. The business must further show that its reliance on the industry

practice was reasonable. If the business relies even in good faith on industry practice and is mistaken in this belief about industry practice, they do not qualify for relief under this safe haven.

2. Substantive Consistency. The treatment of the workers as independent contractors must be consistent with the treatment by the business of all workers holding substantially similar positions.

3. Reporting Consistency. All forms 1099 required to be filed by the business with respect to the workers must be timely filed and must be filed on a basis consistent with the treatment of the workers as independent contractors. This applies to the period in question. So if in one period, forms 1099 are filed and in another they are not, Section 530 relief will only apply to the period when the forms were filed. If the business in good faith but incorrectly filed the incorrect type of 1099 form, they will not lose eligibility for Section 530 relief.

If a business meets all three of the above requirements and cooperates with the IRS, then the IRS bears the burden of proving that the treatment of the workers is inaccurate. If the business is entitled to relief under section 530, the IRS will halt its inquiry into the status of the workers in question. These workers can continue to be treated as independent contractors and receive 1099 forms. The individuals may still request a determination of their individual status by filing a form SS-8, Determination of Worker Status for Purposes of Federal employment Taxes and Income Tax Withholding. The IRS can then rule that they are employees. Also, section 530 relief is only available from the IRS. It does not apply to other governmental agencies such as state labor boards, workers compensation organizations, or state unemployment agencies.

If the employer is entitled to relief under Section 530, the employer is only relieved of the requirement to pay employment taxes and the penalties on them. The employee will remain an employee for other purposes including income tax, and benefit eligibility purposes. Section 530 relief does not make the employee a self employed business person. They must report the income on line 7 of their form 1040 rather than schedule C and they are liable for the employee's share of the FICA which must be reported on form 4137. If the employee previously filed their tax return using schedule C and paid self-employment taxes, they may claim a refund of the employer share of FICA. The employee must deduct unreimbursed employee business expenses using form 2106 as a miscellaneous itemized deduction subject to the 2% floor on miscellaneous itemized deductions.

The following workers are not covered by section 530:

- engineers
- Designers
- Drafters
- Computer Programmers
- Systems analysts
- Other similarly skilled workers engaged in a similar line of work.

Some examples of occupations where independent contractor arrangements are common:

- Accountant
- Author
- Barber or Hair Stylist
- Boxer
- courier
- Court Reporter
- Dry Cleaner
- Engineering Consultant
- Entertainer
- Gardner
- General Contractor
- General Practitioner
- Hair Stylist
- Interpreter or Translator
- Lawn Care Worker
- Lawyer
- Market stall
- Mason
- Massage Therapist
- Doctor
- Nurse
- Newspaper Carrier
- Personal Trainer
- Pool Maintenance Person
- Private Investigator
- Private Military Company
- Radio Presenter
- Private Security
- Professional Wrestler
- Professional Athlete
- Real Estate Agent
- Sales Representative
- Short Term University Instructor
- Stock Broker
- Talent Agent
- Tattoo Artist
- Taxi or Limousine Driver
- Telephone Psychic
- Tradesman
- Truck Driver
- Tutor

Domestic workers are generally treated as employees. Internal Revenue Code Section 3306 covers domestic workers. If the work is done in the home of the employer and particularly if the employer also provides room and board, the worker is most likely an employee. Domestic workers income is generally reported on a form W-2 and the employers' 1040 Schedule H where the employer will report and pay the appropriate federal withholding, FICA taxes, and federal unemployment taxes. An exception would potentially be a domestic worker who is working in multiple homes and is a legitimate business operation.

Corporate officers are specifically included as employees by Internal Revenue Code Section 3121(d)(1). Federal regulations provide that generally an officer of a corporation is an employee of the corporation. If the officer does not provide any services or minor services and the officer is not entitled to receive, directly or indirectly any compensation, then the officer is not considered an employee. When the IRS examines a return and determines that an officer is an employee, they will examine all payments to such an officer to determine if any payments which were not accounted for as income on the W-2 should be reclassified as W-2 wages subject to withholding and other taxes. The types of payments looked at will include "draws", loans, dividends, or any other type of distribution or payment to the officer.

Subchapter S corporations must pay a reasonable salary to the active owners. An IRS examiner will look extremely close at the situation where Subchapter S owners are paid a salary for personal services as well as have distributions made to them. If the largest part of the revenue of the S corporation is from personal services of the owner, the W-2 income should be the vast majority of the payments to that owner during the year.

A Director of a corporation is not considered an employee. It is feasible for a director who is also an employee to receive a W-2 form for compensation received as an employee and a 1099 form for compensation as a Director.

If a worker believes they have been misclassified, there are steps they can take to get the classification changed. The worker or the employer can file a Form SS-8 with the IRS. A determination letter will be sent and the ruling will apply to all employees of the same classification. If a worker was classified as an independent contractor and the IRS determines that the worker is an employee, then amended tax returns must be filed, by both parties.

Statutory Employees.

There are four categories of individuals referred to as statutory employees. They are:

1. Agent drivers or commission drivers
2. full time life insurance salespersons
3. Home workers, and
4. Traveling or city salespersons.

These workers are considered employees for FICA tax and in some instances for FUTA tax, but not for income tax withholding. A statutory employee must also meet these three basic requirements:

1. The worker is expected to perform substantially all the work
2. the worker has no substantial investment in facilities other than transportation facilities used in performing the work
3. There is a continuing work relationship with the person or organization for whom the services are performed.

Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding

OMB. No. 1545-0004

For IRS Use Only:
Case Number: _____

Earliest Receipt Date: _____

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ► _____

Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* on page 6 for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

Parts I–V. All filers of Form SS-8 must complete all questions in Parts I–IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or workers' name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

Part I General Information

- 1 This form is being completed by: ☐ Firm ☐ Worker; for services performed _____ to _____.
(beginning date) (ending date)
- 2 Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get worker's compensation benefits, or you were audited or are being audited by the IRS). _____

- 3 Total number of workers who performed or are performing the same or similar services: _____.
- 4 How did the worker obtain the job? ☐ Application ☐ Bid ☐ Employment Agency ☐ Other (specify) _____
- 5 **Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings).** In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ _____.
If both Form W-2 and Form 1099-MISC were issued or received, explain why. _____
- 6 Describe the firm's business. _____

Part I General Information (continued)

- 7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner: _____
 Previous owner's taxpayer identification number: _____ Change was a: ☐ Sale ☐ Merger ☐ Acquisition ☐ Reorganization
☐ Other (specify) _____
 Description of above change: _____
 Date of change (MM/DD/YY): _____
- 8 Describe the work done by the worker and provide the worker's job title. _____

- 9 Explain why you believe the worker is an employee or an independent contractor. _____

- 10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request?
☐ Yes ☐ No ☐ N/A
 If "Yes," what were the dates of the prior service? _____
 If "Yes," explain the differences, if any, between the current and prior service. _____

- 11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. _____

Part II Behavioral Control (Provide names and titles of specific individuals, if applicable.)

- 1 What specific training and/or instruction is the worker given by the firm? _____

- 2 How does the worker receive work assignments? _____

- 3 Who determines the methods by which the assignments are performed? _____
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? _____

- 5 What types of reports are required from the worker? Attach examples. _____

- 6 Describe the worker's daily routine such as his or her schedule or hours. _____

- 7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. _____

- 8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). _____

- 9 Is the worker required to provide the services personally? ☐ Yes ☐ No
- 10 If substitutes or helpers are needed, who hires them? _____
- 11 If the worker hires the substitutes or helpers, is approval required? ☐ Yes ☐ No
 If "Yes," by whom? _____
- 12 Who pays the substitutes or helpers? _____
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? ☐ Yes ☐ No
 If "Yes," by whom? _____

Part III Financial Control (Provide names and titles of specific individuals, if applicable.)

- 1 List the supplies, equipment, materials, and property provided by each party:
 The firm: _____
 The worker: _____
 Other party: _____
- 2 Does the worker lease equipment, space, or a facility? ☐ Yes ☐ No
 If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) _____
- 3 What expenses are incurred by the worker in the performance of services for the firm? _____
- 4 Specify which, if any, expenses are reimbursed by:
 The firm: _____
 Other party: _____
- 5 Type of pay the worker receives: ☐ Salary ☐ Commission ☐ Hourly Wage ☐ Piece Work
☐ Lump Sum ☐ Other (specify) _____
 If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. \$ _____
- 6 Is the worker allowed a drawing account for advances? ☐ Yes ☐ No
 If "Yes," how often? _____
 Specify any restrictions. _____
- 7 Whom does the customer pay? ☐ Firm ☐ Worker
 If worker, does the worker pay the total amount to the firm? ☐ Yes ☐ No If "No," explain. _____
- 8 Does the firm carry workers' compensation insurance on the worker? ☐ Yes ☐ No
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)? _____
- 10 Does the worker establish the level of payment for the services provided or the products sold? ☐ Yes ☐ No
 If "No," who does? _____

Part IV Relationship of the Worker and Firm

- 1 Please check the benefits available to the worker: ☐ Paid vacations ☐ Sick pay ☐ Paid holidays
☐ Personal days ☐ Pensions ☐ Insurance benefits ☐ Bonuses
☐ Other (specify) _____
- 2 Can the relationship be terminated by either party without incurring liability or penalty? ☐ Yes ☐ No
 If "No," explain your answer. _____
- 3 Did the worker perform similar services for others during the time period entered in Part I, line 1? ☐ Yes ☐ No
 If "Yes," is the worker required to get approval from the firm? ☐ Yes ☐ No
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. _____
- 5 Is the worker a member of a union? ☐ Yes ☐ No
- 6 What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable. _____
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? _____
- 8 What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)? _____
- 9 How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services? _____
- 10 If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)? _____

Part V For Service Providers or Salespersons. Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? _____
- 2 Who provides the worker with leads to prospective customers? _____
- 3 Describe any reporting requirements pertaining to the leads. _____
- 4 What terms and conditions of sale, if any, are required by the firm? _____
- 5 Are orders submitted to and subject to approval by the firm? ☐ Yes ☐ No
- 6 Who determines the worker's territory? _____
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? ☐ Yes ☐ No
If "Yes," whom did the worker pay? _____
If "Yes," how much did the worker pay? \$ _____
- 8 Where does the worker sell the product (for example, in a home, retail establishment)? _____
- 9 List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. _____
- 10 Does the worker sell life insurance full time? ☐ Yes ☐ No
- 11 Does the worker sell other types of insurance for the firm? ☐ Yes ☐ No
If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance %
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation %
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? ☐ Yes ☐ No
Describe the merchandise and state whether it is equipment installed on the customers' premises. _____

**Sign
Here**

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

 _____ Title ► _____ Date ► _____
 Type or print name below signature.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose

Firms and workers file Form SS-8 to request a determination of the status of a worker for purposes of federal employment taxes and income tax withholding.

A Form SS-8 determination may be requested only in order to resolve federal tax matters. If Form SS-8 is submitted for a tax year for which the statute of limitations on the tax return has expired, a determination letter will not be issued. The statute of limitations expires 3 years from the due date of the tax return or the date filed, whichever is later.

The IRS does not issue a determination letter for proposed transactions or on hypothetical situations. We may, however, issue an information letter when it is considered appropriate.

Definition

Firm. For the purposes of this form, the term "firm" means any individual, business enterprise, organization, state, or other entity for which a worker has performed services. The firm may or may not have paid the worker directly for these services.



If the firm was not responsible for payment for services, be sure to enter the name, address, and employer identification number of the payer on the first page of Form SS-8, below the identifying information for the firm and the worker.

The Form SS-8 Determination Process

The IRS will acknowledge the receipt of your Form SS-8. Because there are usually two (or more) parties who could be affected by a determination of employment status, the IRS attempts to get information from all parties involved by sending those parties blank Forms SS-8 for completion. Some or all of the information provided on this Form SS-8 may be shared with the other parties listed on page 1. The case will be assigned to a technician who will review the facts, apply the law, and render a decision. The technician may ask for additional information from the requestor, from other involved parties, or from third parties that could help clarify the work relationship before rendering a decision. The IRS will generally issue a formal determination to the firm or payer (if that is a different entity), and will send a copy to the worker. A determination letter applies only to a worker (or a class of workers) requesting it, and the decision is binding on the IRS. In certain cases, a formal determination will not be issued. Instead, an information letter may be issued. Although an information letter is advisory only and is not binding on the IRS, it may be used to assist the worker to fulfill his or her federal tax obligations.

Neither the Form SS-8 determination process nor the review of any records in connection with the determination constitutes an examination (audit) of any federal tax return. If the periods under consideration have previously been examined, the Form SS-8 determination process will not constitute a reexamination under IRS reopening procedures. Because this is not an examination of any federal tax return, the appeal rights available in connection with an examination do not apply to a Form SS-8 determination. However, if you disagree with a determination or you have additional information concerning the work relationship that you believe was not previously considered, you may request that the determining office reconsider the determination.

Completing Form SS-8

Answer all questions as completely as possible. Attach additional sheets if you need more space. Provide information for **all** years the worker provided services for the firm. Determinations are based on the entire relationship between the firm and the worker. Also indicate if there were any significant changes in the work relationship over the service term.

Additional copies of this form may be obtained on IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Fee

There is no fee for requesting a Form SS-8 determination letter.

Signature

Form SS-8 must be signed and dated by the taxpayer. A stamped signature will not be accepted.

The person who signs for a corporation must be an officer of the corporation who has personal knowledge of the facts. If the corporation is a member of an affiliated group filing a consolidated return, it must be signed by an officer of the common parent of the group.

The person signing for a trust, partnership, or limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

Where To File

Send the completed and signed Form SS-8 to the address below for the firm's location. Faxed, photocopied, or electronic versions of Form SS-8 are not acceptable for the initial request for the Form SS-8 determination. However, only for cases involving federal agencies, send Form SS-8 to the Internal Revenue Service, Attn: CC:CORP:T:C, Ben Franklin Station, P.O. Box 7604, Washington, DC 20044. **Do not submit Form SS-8 with your tax return as that will delay processing time.**

Firm's location:

Send to:

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, American Samoa, Guam, Puerto Rico, U.S. Virgin Islands

Internal Revenue Service
Form SS-8 Determinations
P.O. Box 630
Stop 631
Holtsville, NY 11742-0630

Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, all other locations not listed

Internal Revenue Service
Form SS-8 Determinations
40 Lakemont Road
Newport, VT 05855-1555

Instructions for Workers

If you are requesting a determination for more than one firm, complete a separate Form SS-8 for each firm.



Form SS-8 is not a claim for refund of social security and Medicare taxes or federal income tax withholding.

If the IRS determines that you are an employee, you are responsible for filing an amended return for any corrections related to this decision. A determination that a worker is an employee does not necessarily reduce any current or prior tax liability. For more information, call 1-800-829-1040.

Time for filing a claim for refund. Generally, you must file your claim for a credit or refund within 3 years from the date your original return was filed or within 2 years from the date the tax was paid, whichever is later.

Filing Form SS-8 does not prevent the expiration of the time in which a claim for a refund must be filed. If you are concerned about a refund, and the statute of limitations for filing a claim for refund for the year(s) at issue has not yet expired, you should file Form 1040X, Amended U.S. Individual Income Tax Return, to protect your statute of limitations. File a separate Form 1040X for each year.

On the Form 1040X you file, do not complete lines 1 through 22 on the form. Write "Protective Claim" at the top of the form, sign and date it. In addition, enter the following statement in Part III: "Filed Form SS-8 with the Internal Revenue Service Office in (Holtsville, NY; Newport, VT; or Washington, DC; as appropriate). By filing this protective claim, I reserve the right to file a claim for any refund that may be due after a determination of my employment tax status has been completed."

Filing Form SS-8 does not alter the requirement to timely file an income tax return. Do not delay filing your tax return in anticipation of an answer to your Form SS-8 request. In addition, if applicable, do not delay in responding to a request for payment while waiting for a determination of your worker status.

Instructions for Firms

If a **worker** has requested a determination of his or her status while working for you, you will receive a request from the IRS to complete a Form SS-8. In cases of this type, the IRS usually gives each party an opportunity to present a statement of the facts because any decision will affect the employment tax status of the parties. Failure to respond to this request will not prevent the IRS from issuing a determination letter based on the information he or she has made available so that the worker may fulfill his or her federal tax obligations. However, the information that you provide is extremely valuable in determining the status of the worker.

If you are requesting a determination for a particular class of worker, complete the form for one individual who is representative of the class of workers whose status is in question. If you want a written determination for more than one class of workers, complete a separate Form SS-8 for one worker from each class whose status is typical of that class. A written determination for any worker will apply to other workers of the same class if the facts are not materially different for these workers. Please provide a list of names and addresses of all workers potentially affected by this determination.

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker under section 530 of the 1978 Revenue Act. However, this relief provision cannot be considered in conjunction with a Form SS-8 determination because the determination does not constitute an examination of any tax return. For more information regarding section 530 of the 1978 Revenue Act and to determine if you qualify for relief under this section, visit IRS.gov.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on Form SS-8 to carry out the Internal Revenue laws of the United States. This information will be used to determine the employment status of the worker(s) described on the form. Subtitle C, Employment Taxes, of the Internal Revenue Code imposes employment taxes on wages, including income tax withholding. Sections 3121(d), 3306(a), and 3401(c) and (d) and the related regulations define employee and employer for purposes of employment taxes imposed under Subtitle C. Section 6001 authorizes the IRS to request information needed to determine if a worker(s) or firm is subject to these taxes. Section 6109 requires you to provide your taxpayer identification number. Neither workers nor firms are required to request a status determination, but if you choose to do so, you must provide the information requested on this form. Failure to provide the requested information may prevent us from making a status determination. If any worker or the firm has requested a status determination and you are being asked to provide information for use in that determination, you are not required to provide the requested information. However, failure to provide such information will prevent the IRS from considering it in making the status determination. Providing false or fraudulent information may subject you to penalties. Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give the information shown on your tax return to others as described in the Code. Routine uses of this information include providing it to the Department of Justice for use in civil and criminal litigation, to the Social Security Administration for the administration of social security programs, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for the administration of their tax laws. We also may disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. We may provide this information to the affected worker(s), the firm, or payer as part of the status determination process.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

The time needed to complete and file this Form SS-8 will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 23 hrs., 55 min.; Learning about the law or the form, 1 hr., 48 min.; Preparing the form, 5 hrs., 03 min.; and Sending the form to the IRS, 48 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File* on page 5.

Voluntary Classification Settlement Program

Information taken from Announcement 2011-64

The Internal Revenue Service has developed a program to permit taxpayers to voluntarily reclassify workers as employees for federal employment tax purposes. the Voluntary Classification Settlement Program (VCSP) allows eligible taxpayers to voluntarily reclassify their workers for federal employment tax purposes and obtain relief similar to that obtained in the current Classification Settlement Program (CSP). The VCSP is optional and provides taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods with limited federal employment tax liability for the past nonemployee treatment. To participate in the program the taxpayer must meet certain eligibility requirements, apply to participate in VCSP, and enter into a closing agreement with the IRS.

Eligibility.

The VCSP is available to taxpayers who want to voluntarily change the prospective classification of their workers. The program applies to taxpayers who are currently treating their workers (or a class of workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees. To be eligible, a taxpayer must have consistently treated the workers as nonemployees, and must have filed all required forms 1099 for the workers for the previous three years. The taxpayer cannot currently be under audit by the IRS. furthermore, the taxpayer cannot be currently under audit concerning the classification of the workers by the Department of Labor or by a state government agency. A taxpayer who was previously audited by the IRS or the Department of Labor concerning the classification of the workers will only be eligible if the taxpayer has complied with the results of that audit.

Effect of VCSP

A taxpayer who participates in the VCSP will agree to prospectively treat the class of workers as employees for future tax periods. In exchange, the taxpayer will:

- pay 10 percent of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year, determined under the reduced rates of section 3509 of the Internal Revenue Code;
- will not be liable for any interest and penalties on the liability; and
- will not be subject to an employment tax audit with respect to the worker classification of the workers for prior years.
- Additionally, a taxpayer participating in the VCSP will agree to extend the period of limitations on the assessment of employment taxes for three years for the first, second and third calendar years beginning after the date on which the taxpayer has agreed under the VCSP closing agreement to begin treating the workers as employees.

Application Process

Eligible taxpayers who wish to participate in the VCSP must submit an application for participation in the program. Information about the VCSP and the application is available on www.irs.gov. Along with the application, the name of a contact or an authorized representative with a valid Power of Attorney (Form 2848) should be provided. The IRS will contact the taxpayer or authorized representative to complete the process once it has reviewed the application and verified the taxpayer's eligibility. The IRS retains discretion whether to accept a taxpayer's application for the VCSP. Taxpayers whose application has been accepted will enter into a closing agreement with the IRS to finalize the terms of the VCSP and will simultaneously make full and complete payment of any amount due under the closing agreement.

SECTION TWO

1099 Reporting Requirements Overview

There is a tremendous amount of misunderstanding of the requirements related to 1099 forms and independent contractors. Over the past several years there has been a variety of new requirements and legislation put into effect and removed from effect which continues to contribute to confusion regarding what the requirements are for individual businesses and organizations. We are putting this information together in order to assist you in forming a better understanding of what will be required for you.

The Internal Revenue Service has implemented a variety of reporting requirements for anyone engaged in a trade or business. The ones we are dealing with are contained in Internal Revenue Code Sections 6042 through 6050 and generally require a variety of information reporting requirements.

Code Section 6041 requires information returns to be made by every person or payer engaged in a trade or business who makes payments as defined in section 6041(a), aggregating \$600 or more in any taxable year to another person or payee in the course of the payers' trade or business. These information returns are the various 1099 forms we will be covering as well as form W-2, Wage and Tax Statement which is generally used for payments to employees. The various 1099 forms are generally required to be provided to each payee as well as reported to the Internal Revenue Service.

The Patient Protection and Affordable Care Act was signed into law on March 23, 2010. This law made some extremely burdensome requirements for 1099 reporting. On April 14, 2011 this requirement was repealed after significant uproar from businesses about the undue burden this would have placed on them in recordkeeping and reporting costs.

The Small Business Jobs Act of 2010 contained a provision requiring owners of rental property to issue 1099 forms to service providers for payments of \$600 or more during the year. On April 4, 2011 this requirement was repealed by the Comprehensive 1099 Taxpayer Protection and Replacement of Exchange Subsidy Overpayments Act of 2011. It should be obvious that the IRS and Congress want more 1099 reporting, and we can expect a high likelihood of smaller increases in our reporting burden in the future.

The Small Business Jobs Act of 2010 also significantly increased the penalties related to non-compliance with 1099 filing. These higher penalties were not repealed. They will be discussed a little later.

1099 Reporting Requirements

Purpose of 1099

The government has long had concerns that all income is being reported on the income tax returns of individuals and businesses. There is a belief that there is an underground economy where income does not get reported and therefore income taxes are not paid on that income. We have a voluntary system of income tax compliance, but congress and the IRS often find it necessary to put in place systems which make our voluntary compliance a bit easier. Accordingly, the system of 1099 reporting was implemented to assist in alleviating some of this underreporting of income.

It is the responsibility of each of us as taxpayers to keep adequate records to report our income and taxes properly. Using 1099's to report income assists in keeping those adequate records.

1099 Reporting Requirements Deadlines

Income reported on a 1099 form is for the preceding calendar year. The 1099 forms are dated and the income must be reported on the form dated for the year in which the income was paid. In other words, if the funds are paid in the calendar year of 2012, then it must be reported on a 1099 form dated 2012. You cannot change the date on the form, you must obtain the form for the proper year.

In general the majority of the various 1099 forms have due dates of January 31 as the date you must provide the form to the recipient of the income being reported. This January 31 deadline is the date by which you must have the envelope postmarked if mailing the form. The 1099 reporting to the IRS has a deadline of February 28. The reporting to the IRS will include reporting on a form 1096 form as a transmittal form which will go along with the 1099 forms sent to the IRS. In a following section on the different types of 1099 forms we include a list of various types of 1099 forms and the due date requirements where you can see the different due dates for a few of the 1099 forms like the 1099-B and 1099-S. The vast majority of the forms you are likely to be filing will have the above due dates.

As with most IRS reporting requirements, if the reporting date falls on a weekend or holiday, the due date is the next work day.

1099 forms can be electronically filed and IRS Publication 1220 provides the requirements and procedures required to file electronically. Electronically filed 1099 and 1096 forms have a due date of March 31. It is possible in some cases to provide the information to the recipient electronically as long as the recipient electronically gives consent and the correct format is maintained.

If you are required to file 250 or more information returns of any specific type, you must file electronically. You can request a hardship waiver from the electronic filing requirement by filing form 8508 at least 45 days prior to the due date of the information returns.

An automatic extension for filing of 30 days is available. Form 8809 must be filed prior to the original due date to obtain this extensions. In some hardship cases, an additional extension of 30 days may be granted.

1099 Reporting Requirements

Who Gets a 1099

One of the various form 1099's should be used to report payments made in the course of business. In general, payments made to individuals or non corporate payees which exceed \$600 in total for the calendar year should be reported on a form 1099 to the individual or other payee who received the payment as well as reported to the IRS. But there are exceptions and there are exceptions to the exceptions.

There is an exception to the requirement for 1099 reporting for corporations. So if you know that the payee is a corporation, then there is not a 1099 form reporting requirement for that payee. But if the payee is a lawyer or a legal firm, then you must do 1099 reporting without regard to corporate status. If the transactions involve medical and health care payments, then you must do 1099 reporting without regard to corporate status. If the transactions involve cancellation of debt, barter or exchange, or certain transactions related to the fishing industry, then 1099 reporting is required without regard to corporate status.

If there was any federal tax withholding involved, then 1099 reporting is required without regard to corporate status. Those businesses which are required to file form 1099K for merchant card or third party transactions must report 1099's without regard to corporate status.

Forms 1099-A (abandonment of property), 1099-B (Broker and Barter transactions), 1099-H (health credit advance payments), 1099-LTC (Long Term Care), 1099-Q (529 Plans), 1099-SA (HSA and MSA) all require 1099 reporting without regard to the amount paid. If any amount is paid, there must be 1099 reporting to the payee and reporting to the IRS.

Amounts paid as interest, dividends, retirement income payments, distributions from cooperatives, and royalties must be reported on form 1099 if the amount exceeds \$10 for the calendar year.

So in reality, the \$600 rule which we think of as the general rule for 1099 reporting only applies to forms 1099-C (cancellation of debt), 1099-MISC (miscellaneous income), 1099-S (certain real estate transactions). Even then, there are exceptions for those forms. Payments to fishing crews must be reported for all amounts paid. Substitute dividends and royalties reported on 1099-MISC must be reported if they exceed \$10.

1099 reporting is intended for reporting amounts paid to non-employees. In general any payment made to an employee which is not a non-reportable reimbursement of expense or non-taxable benefit should be reported on the employees' form W-2 at the end of the year and appropriate withholding done on that income. It is common for businesses to provide gifts, bonuses, commissions, gift cards or other payments to their employees and not account for these payments as income on the employees' W-2 form. Sometimes this is done inadvertently, but the employer sometimes tries to solve the problem by issuing a 1099 form to the employee. They should not do this. These kinds of payments are properly reported on the employees' form W-2.

Some other types of payments made to employees such as Per Diems and Mileage are generally considered reimbursements of expenses and if handled properly are not reportable either on a W-2 or 1099 form.

Directors fees for members of the board of directors or an organization are statutorily reported on form 1099-MISC. This is true even if the director is also an employee of the organization.

1099 Reporting Requirements

Form W-9

A form W-9, Request for Taxpayer Identification Number and Certification, should be obtained from each individual or business you need to issue a form 1099 to. This form allows you to be certain you have all the information necessary to properly issue the form 1099 at the end of the year. The form should be completed by a U.S. person (including U.S. Resident Aliens).

Many organizations make it a policy to obtain W-9 forms from all payees. The W-9 provides documentation if the organization is a corporation exempt from 1099 reporting. It also provides the information necessary to prepare the 1099 form. If a payee is paid more than \$600 unexpectedly, the organization does not have to attempt to obtain the W-9 after the fact. If an organization is unable to obtain an ID number from a payee they must do backup withholding at a rate of 28%. Having the W-9 already on file helps to avoid problems with not having done the withholding prior to payments exceeding \$600.

Taxpayer identification numbers are generally Social Security numbers or Employer identification numbers. Resident aliens and non-resident aliens who are not eligible for social security numbers can obtain a Taxpayer Identification Number for income tax reporting. These numbers start with a 9.

If the recipient is a foreign person, form W-8 (generally a W-8BEN) should be completed. Generally most payments of US source income made to a foreign person are subject to a US tax of 30%. If there is a tax treaty between the US and the foreign country, there may be a lower rate or an exemption. Reporting of withholding for non resident aliens is done on form 1042-S. We will discuss W-8BEN forms more after we cover some more W-9 information.

The form W-9 is kept by the payer and is not sent to the IRS. It may be completed on a paper form or electronically.

When filling out a form W-9, as a sole proprietorship, write in the name of the sole proprietor on the first line. You must include the individual name on line one, not just a business name. Any DBA (doing business as) or business name should be listed on the second line. You can use either the social security number of the owner or the Employer Identification Number (EIN) of the business. It is usually preferable to use the EIN because individuals usually do not want to release their Social Security numbers to too many places. The IRS does specifically state in the instructions for the W-9 that either the SSN or the EIN can be used.

As a Partnership or a corporation, the EIN should generally be used.

Limited Liability Companies are relatively new entities and there are some unusual situations which may come up with them. The IRS considers them disregarded entities and when filling out the W-9 you should think in terms of disregarding the entity when trying to determine how to fill it out. You should fill in the form the way the organization files its taxes. In general, if there is one owner, it is considered a sole proprietorship and the W-9 should be filled in as if it is a sole proprietorship. If there is more than one owner, then generally, the form would be filled in like a partnership. But Limited Liability Companies have the ability to choose to be taxed as a corporation, either an S Corporation or a C corporation without regard to the number of owners. If the Limited Liability Company has chosen to be taxed as a corporation, then you should check the "corporation" box.

The Taxpayer identification number which shows up on the 1099 form is used by the IRS to match the amount of income reported on the 1099 to the amount the taxpayer reports on their income tax returns. If the taxpayer does not properly report the income, they are likely to receive a notice from the IRS in one to three years after filing the original income tax return. This creates extra work for the taxpayer to rectify the situation after the IRS has most likely asked for more money.

These notices from the IRS are usually called “B” notices with the “B” standing for Backup withholding. The actual notice number is CP2100. If a payer received a CP2100 B notice, they must request in writing the correct information from the payee within 15 days. If they do not receive a response from the payee, they must begin backup withholding in 30 days. They may discontinue backup withholding if the payee provides the correct information. They may not return the backup withholding to the payee and must report it on the form 1099 and 1096.

If a second CP2100 notice is received (sometimes called a “C” notice), the payer must request correct information within 15 days and begin backup withholding in 30 if they do not receive a response just as with the first CP2100, but once backup withholding has begun, they may not discontinue backup withholding until notified by the IRS that they may discontinue.

If a payer fails to take the action required by the CP2100 B notice, they can be held responsible for the backup withholding and have to pay it along with penalties and interest, even though they did not backup withhold.

It is in the best interests of the payer to document all actions taken in response to B notices and to do the backup withholding if required. It is in the payers’ best interest to feel comfortable that the

information on the W-9 and 1099 is accurate. If you are registered with E-services at the IRS you have access to a product known as TIN matching. You can use this product to verify (match) the name you have been provided and the TIN of payees.

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address (number, street, and apt. or suite no.) City, state, and ZIP code List account number(s) here (optional)	Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
				-				
Employer identification number								
				-				

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign
Here**

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

1099 Reporting Requirements Form W-8BEN

Form W-8 is similar to the W-9 in that it is a request for taxpayer identification information. There are several forms W-8, but the one generally used for what we are covering in this discussion is form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. This form should be used and requested from any foreign person you are making payments to for US source income. A foreign person can be a corporation, a government, or a non-profit organization as well as an individual.

US source income depends on where the services are performed. If they are performed within the United States it is US source income. For rents or royalties it is US source income if the property is located in the United States.

A taxpayer identification number is not required on the form W-8BEN unless a treaty benefit is being claimed. A treaty benefit is generally an exemption from withholding or a reduced withholding rate. The withholding if no treaty benefit is requested is 30%.

The reporting of these payments is not done on form 1099. These payments should be reported on form 1042-S and the information is reported to the IRS along with the payment of the withholding on form 1042-T.

**Certificate of Foreign Status of Beneficial Owner
for United States Tax Withholding**

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do not use this form for:

- A U.S. citizen or other U.S. person, including a resident alien individual W-9
- A person claiming that income is effectively connected with the conduct of a trade or business in the United States W-8ECI
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) W-8ECI or W-8IMY
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) W-8ECI or W-8EXP

Note: These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.

- A person acting as an intermediary W-8IMY
- Note:** See instructions for additional exceptions.

Part I Identification of Beneficial Owner (See instructions.)

1 Name of individual or organization that is the beneficial owner		2 Country of incorporation or organization															
3 Type of beneficial owner: <table border="0"><tr><td><input type="checkbox"/> Individual</td><td><input type="checkbox"/> Corporation</td><td><input type="checkbox"/> Disregarded entity</td><td><input type="checkbox"/> Partnership</td><td><input type="checkbox"/> Simple trust</td></tr><tr><td><input type="checkbox"/> Grantor trust</td><td><input type="checkbox"/> Complex trust</td><td><input type="checkbox"/> Estate</td><td><input type="checkbox"/> Government</td><td><input type="checkbox"/> International organization</td></tr><tr><td><input type="checkbox"/> Central bank of issue</td><td><input type="checkbox"/> Tax-exempt organization</td><td><input type="checkbox"/> Private foundation</td><td colspan="2"></td></tr></table>			<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation	<input type="checkbox"/> Disregarded entity	<input type="checkbox"/> Partnership	<input type="checkbox"/> Simple trust	<input type="checkbox"/> Grantor trust	<input type="checkbox"/> Complex trust	<input type="checkbox"/> Estate	<input type="checkbox"/> Government	<input type="checkbox"/> International organization	<input type="checkbox"/> Central bank of issue	<input type="checkbox"/> Tax-exempt organization	<input type="checkbox"/> Private foundation		
<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation	<input type="checkbox"/> Disregarded entity	<input type="checkbox"/> Partnership	<input type="checkbox"/> Simple trust													
<input type="checkbox"/> Grantor trust	<input type="checkbox"/> Complex trust	<input type="checkbox"/> Estate	<input type="checkbox"/> Government	<input type="checkbox"/> International organization													
<input type="checkbox"/> Central bank of issue	<input type="checkbox"/> Tax-exempt organization	<input type="checkbox"/> Private foundation															
4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address. City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)																	
5 Mailing address (if different from above) City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)																	
6 U.S. taxpayer identification number, if required (see instructions) <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN		7 Foreign tax identifying number, if any (optional)															
8 Reference number(s) (see instructions)																	

Part II Claim of Tax Treaty Benefits (if applicable)

9 I certify that (check all that apply):

a ☐ The beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

b ☐ If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).

c ☐ The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

d ☐ The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).

e ☐ The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, \$500,000.

10 Special rates and conditions (if applicable—see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 9a above to claim a _____ % rate of withholding on (specify type of income): _____
Explain the reasons the beneficial owner meets the terms of the treaty article: _____

Part III Notional Principal Contracts

- 11** ☐ I have provided or will provide a statement that identifies those notional principal contracts from which the income is **not** effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

Part IV Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- 1** I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates,
2 The beneficial owner is not a U.S. person,
3 The income to which this form relates is (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, and
4 For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.
Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Sign Here

Signature of beneficial owner (or individual authorized to sign for beneficial owner) Date (MM-DD-YYYY) Capacity in which acting

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 25047Z

Form **W-8BEN** (Rev. 2-2006)



Reporting for foreign payees

Compensation of \$600 or more paid to foreign agricultural workers on H-2A visas is generally reported on form W-2 Wage and Tax Statement. In the situation where an H-2A visa worker did not provide a TIN the employee is subject to backup withholding and the wages and withholding are in this particular situation reported on Form 1099-MISC Miscellaneous Income.

1099 Reporting Requirements

Backup Withholding

There are five situations where backup withholding will be required of an individual or organization:

1. The Internal Revenue Service notifies you to impose backup withholding due to incorrect Taxpayer identification number.
2. For Interest and dividend accounts or instruments, you are notified that the payee is subject to backup withholding under section 3406(a)(1)(C).
3. The payee fails to furnish a taxpayer identification number
4. For interest, dividends, and broker accounts opened after 1983, the payee fails to certify the correct taxpayer identification number
5. For interest and dividend accounts opened and instruments acquired after 1983, the payee fails to certify to you, under penalties of perjury, that he or she is not subject to backup withholding under number 4 above.

Backup withholding is at a rate of 28% of the amount paid. If backup withholding is required, the payer must comply with 1099 reporting requirements no matter what the amount paid is. Even if it is below the minimum filing requirement. Form 945 must be filed with the IRS to report and pay backup withholding. IRS publication 1281 discusses backup withholding in more depth.

Form **945**Department of the Treasury
Internal Revenue Service**Annual Return of Withheld Federal Income Tax**

► For withholding reported on Forms 1099 and W-2G.
► See separate instructions. For more information on income tax withholding, see Pub. 15 (Circ. E) and Pub. 15-A.
Please type or print.

OMB No. 1545-1430

2011

Enter state code
for state in
which deposits
were made **only**
if different from
state in address
to the right ►
(see the
instructions).

Name (as distinguished from trade name)

Calendar year

If address is
different
from prior
return, check
here. ► ☐

Trade name, if any

Employer identification number (EIN)

Address (number and street)

City, state, and ZIP code

A If you **do not have to file** returns in the future, check here ► ☐ and enter date final payments made. ► _____

1 Federal income tax withheld from pensions, annuities, IRAs, gambling winnings, etc.	1		
2 Backup withholding	2		
3 Total taxes. If \$2,500 or more, this must equal line 7M below or line M of Form 945-A	3		
4 Total deposits for 2011, including overpayment applied from a prior year and overpayment applied from Form 945-X	4		
5 Balance due. If line 3 is more than line 4, enter the difference and see the separate instructions	5		
6 Overpayment. If line 4 is more than line 3, enter the difference ► \$ _____			

Check one: ☐ Apply to next return. ☐ Send a refund.

• **All filers:** If line 3 is less than \$2,500, **do not** complete line 7 or Form 945-A.

• **Semiweekly schedule depositors:** Complete **Form 945-A** and check here ► ☐

• **Monthly schedule depositors:** Complete **line 7, entries A through M**, and check here ► ☐

7 Monthly Summary of Federal Tax Liability. (Do not complete if you were a semiweekly schedule depositor.)					
	Tax liability for month			Tax liability for month	
A January			F June		
B February			G July		
C March			H August		
D April			I September		
E May			J October		
			K November		
			L December		
			M Total liability for year (add lines A through L)		

Do you want to allow another person to discuss this return with the IRS (see the instructions)? ☐ Yes. Complete the following. ☐ No.

Third-Party Designee	Designee's name ►	Phone no. ►	Personal identification number (PIN) ►

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Paid Preparer Use Only

Signature ►	Print Your Name and Title ►	Date ►	Check <input type="checkbox"/> if self-employed	PTIN
Print/Type preparer's name	Preparer's signature	Date		
Firm's name ►	Firm's EIN ►			
Firm's address ►	Phone no.			

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 14584B

Form **945** (2011)

1099 Reporting Requirements

Corrected 1099's

There are two types of errors which can be corrected with corrected 1099 forms.

Error type one is an incorrect dollar amount, payee name or address or a situation where a 1099 form should not have been filed. In this situation, prepare a new form 1099 and mark it as corrected in the box where indicated. Prepare a new 1096 form to transmit the corrected 1099 form to the IRS.

Error type two is when there are incorrect or missing taxpayer Identification numbers or address or the incorrect type of 1099 form was used. In this situation two returns must be prepared to correct the mistake. First, you must prepare a corrected 1099 marking the "corrected" box as above putting in the same payee information as on the originally filed (incorrect) return. The dollar amounts on this corrected return should all be zeros. Then you need to prepare a new 1099 with no mark in the corrected box with the complete and correct information shown on the form. On the 1096 for this new correct 1099 you should write at the top of the form "To Correct Return".

1099 Reporting Requirements Penalties

There are a variety of different penalties for failure to properly file information returns and they have been increasing in recent years. We will go over some of the more important penalties you need to be aware of here.

W-9 penalties

There is a \$50 penalty for failure to furnish a Taxpayer Identification number when a form W-9 is requested.

There is a \$500 civil penalty for providing false information.

There could also be criminal penalties and imprisonment.

1099 Penalties

Failure to File Correct Information Returns by the Due Date (Section 6721):

The failure to file a correct information return by the due date without the ability to show reasonable cause can subject you to a penalty. This failure to file correctly can occur if you do not include correct information on the return, if you do not include all the information required to be shown on the return, or if you fail to file the return in a timely manner. This penalty can also apply if you fail to report a taxpayer identification number or report a taxpayer identification number incorrectly. This penalty also applies if you file on paper when you were required to file electronically or if you do not file on the required machine readable forms.

The amount of the penalty varies by the date when you file the correct information. There are also lower penalties for qualifying small businesses. A qualifying small business is one whose average gross receipts for the most recent three tax years are less than \$5 million. The penalty is as follows:

- \$30 per information return if you correctly file within 30 days (usually March 30 if the due date is February 28); maximum penalty is \$250,000 per year or \$75,000 per year for qualifying small businesses.
- \$60 per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty is \$500,000 per year or \$200,000 per year for qualifying small businesses.
- \$100 per information return if you file after August 1 or you do not file correct information returns; maximum penalty \$1,500,000 per year or \$500,000 per year for qualifying small businesses.

There are some situations where there are exceptions to the above penalties. If you do not qualify for the exceptions and do not file correct returns the penalty is \$50 per information return. Some exceptions to these penalties are as follows:

1. The penalty will not apply to any failure that you can show was due to reasonable cause and not to willful neglect. In general, you must be able to show that your failure was due to an event beyond your control or due to significant mitigating factors. You must also be able to show that you acted in a responsible manner and took steps to avoid the failure.

2. An inconsequential error or omission is not considered to be a failure to include correct information. An inconsequential error or omission does not prevent or hinder the IRS from processing the return, or from correlating the information required to be shown on the returns with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Errors and omissions that are never inconsequential are those related to a taxpayer identification number, a payee's surname or any money amount.

3. De minimus rule for corrections. Even though you cannot show reasonable cause, the penalty for failure to file correct information returns will not apply to a certain number of returns if you filed those returns; either failed to include all the information required on a return or included incorrect information, and filed corrections by August 1. If you meet all three of these conditions the penalty for filing incorrect returns (not filing late) will not apply to the greater of 10 information returns or 1/2 of 1% of the total number of information returns you are required to file for the calendar year.

Intentional disregard for filing requirements. If any failure to file correct information returns is due to intentional disregard of the filing of correct information requirements, the penalty is at least \$100 per information return with no maximum penalty.

Failure to Furnish Correct Payee Statements (Section 6722)

If you cannot show reasonable cause for failing to provide payees their copies of the 1099 or information returns, you are subject to a penalty. the penalty applies if you fail to provide the statement by January 31 (February 15 for some forms), you fail to include all information required, or you include incorrect information on the statement.

The penalty is \$50 per statement, no matter when the correct statement is furnished, with a maximum of \$100,000 per year.

An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her income tax return or from otherwise putting the statement to its intended use. errors and omissions are never inconsequential if they relate to a dollar amount, a significant item in the payee's address, the appropriate form for the information provided, or whether furnished in person or by mailing.

If any failure to provide a correct payee statement is due to intentional disregard of the requirements to furnish a correct payee statement, the penalty is at least \$250 per payee statement with no maximum penalty.

Types of 1099 Forms

Following is a summary listing of various IRS form 1099's along with what to report and the due dates for the forms:

FORM	TITLE	WHAT TO REPORT	AMOUNT TO REPORT	DUE TO IRS	DUE TO RECIPIENT
1099-A	Acquisition or Abandonment of Secured Property	Information about the acquisition or abandonment of property that is security for a debt for which you are the lender	All amounts	February 28	January 31 To borrower
1099-B	Proceeds From Broker and Barter Exchange Transactions	Sales of securities, futures transactions, commodities, barter exchange transactions	All amounts	February 28	February 15
1099-C	Cancellation of Debt	Cancellation of a debt owed to a financial institution or governmental entity or organization in the business of lending money	\$600 or more	February 28	January 31
1099-CAP	Changes in Corporate Control and Capital Structure	Information about cash, stock or other property from and acquisitions or change in the capital structure of a corporation	Amounts valued at \$100 million or more	February 28	January 31 To stockholders
1099-DIV	Dividends and Distributions	Distributions, capital gain distributions or nontaxable distributions paid on stock and liquidation distributions	\$10 or more. \$600 or more for liquidations	February 28	January 31
1099-G	Certain Government Payments	Unemployment Compensation, State tax refunds, agricultural payments, taxable grants	\$10 or more for refunds and unemployment	February 28	January 31
1099-H	Health Coverage Tax Credit Advance Payments	Health Insurance Premiums paid on behalf of certain individuals	All amounts	February 28	January 31
1099-INT	Interest Income	Interest Income	\$10 or more	February 28	January 31
1099-K	Merchant Card and Third Party Payments	Payment settlement entities such as Credit Card merchant processors and Third party Network payments	All amounts for Credit cards. \$20,000 or more and more than 200 transactions for third party.	February 28	January 31
1099-LTC	Long Term Care And Accelerated Death Benefits	Payments under a long term care insurance contract	All amounts	February 29	January 31
1099-MISC	Miscellaneous Income	Rents, royalties, Prizes, Awards, Payments to fishing boat crews and owners, 409A income from Deferred comp plans, Payments to physicians, Payments for services to non-employees, Fish purchases paid in cash for resale, Payments to attorneys, substitute dividends	Mostly \$600 or more. Section 409A and fishing crew payments all amounts. Substitute dividends and royalties \$10 and more.	February 28	January 31 February 15 for substitute dividends and payments to attorneys
1099-OID	Original Issue Discount	Original Issue Discount	\$10 or more	February 28	January 31
1099-PATR	Taxable Distributions from Cooperatives	Distributions from cooperatives passed through to patrons	\$10 or more	February 28	January 31
1099-Q	Payments from qualified Education Programs	Earnings from qualified tuitions programs (529's) and Coverdell ESA's	All amounts	February 28	January 31
1099-R	Distributions from Pensions, Annuities, Retirement Plans Etc	Distributions from retirement plans, profit sharing plans, IRS's, insurance contracts	\$10 or more	February 28	January 31
1099-S	Proceeds from Real Estate Transactions	Gross proceeds from the sale or exchange of real estate and certain royalty payments	\$600 or more	February 28	February 15
1099-SA	Distributions from and HSA or MSA	Distributions from and HSA or MSA	All amounts	February 28	January 31

In some situations there may be a middleman or nominee who receives a 1099 form which includes amounts which may in part or in full belong to someone else. In this case the middleman or nominee must report the full amount on their income tax return and in some appropriate place on the return (the location of which will depend on the type of income), record a reduction in their income by the amount which does not belong to them. They may also be required to issue a 1099 form to the person to whom the income rightfully belongs and report it to the IRS. This will most likely depend on if they are in a trade or business which gave rise to the income.

In the case of a business where there is a predecessor and a successor business, the predecessor and successor may agree to combine the amounts from the predecessor with the amounts from the successor and issue the appropriate information returns from just one of them. Most likely the successor. Absent such an agreement, each of the businesses will be responsible for meeting the appropriate 1099 or other information return reporting requirements on their own.

Since identity theft is a growing problem the IRS has implemented the ability to not show an entire identification number on some copies of 1099 forms issued via Notice 2011-38. When reporting information, the payer may "truncate" payee identification numbers such as Social Security Numbers, Individual Taxpayer Identification numbers, Adoption Taxpayer identification numbers, or Employer Identification numbers on the payee copy of the statements. This Truncating is done by placing an asterisk (*) or an "X" in the place of the first five digits of the identification number followed by the last four digits of the number. All information reporting to the Internal Revenue Service and/or state and local governmental agencies must include the entire tax identification number. Electronically filed information returns must include complete identification numbers.

In general, payments to corporations are exempt from 1099 reporting requirements. There are some exceptions. Some of the most common are as follows:

- Medical and health care payments
- Withheld federal or foreign taxes.
- Barter or exchange transactions
- Substitute payments in lieu of dividends and tax-exempt interest.
- Acquisitions or abandonments of secured property
- Cancellation of debt.
- Payments of attorneys' fees and gross proceeds paid to attorneys.
- Fish purchases for cash.
- Merchant card and third party network payments

It is not appropriate to issue a 1099 form to an employee for amounts paid outside the course of their ordinary work. This would include amounts such as "employee auto allowance"; mileage reimbursements, reimbursements for purchases made by the employee; commissions paid to the employee in addition to their salary or wages; bonuses; payments made in a form other than cash (gifts); overpayments on reimbursements; per diem payments for travel; or pretty well most any payment made to an employee. All these amounts are either non-reportable or reportable on the W-2 form of the employee depending on the particular situation. Bonuses, gifts, or commissions are taxable and reported as income on form W-2. Reimbursements are generally not reportable, although there may be circumstances which would cause them to be reportable.

1099-MISC

By far the most common 1099 form is the 1099-Misc. For most organizations or individuals, it is the only one they will ever prepare and file.

Report rents from Real estate in Box 1 of the 1099-MISC.

Box 2 is for Royalties from copyrights, oil & gas or mineral properties, or patents.

Box 3 is for a variety of items of income but most commonly prizes and awards. It can also be payments received by the beneficiary of a deceased employee, taxable damages, Indian gaming profits.

Box 4 is where backup withholding amounts would appear.

Box 5 is for fishing boat related income. This is generally for fishing proceeds where the organization considers a worker self-employed.

Box 6 is for medical and health care payments.

Box 7 is non-employee compensation. This is the most commonly used box on the 1099-MISC. This is where a wide variety of payments will appear. Included in these payments would be non-employee commissions, attorney fees, non-employee bonuses, directors fees, non-employee mileage or expense amounts, along with almost any kind of payment made which does not fit a category for another box on the 1099-misc or another 1099 form.

☐ CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents \$	OMB No. 1545-0115 2012 Form 1099-MISC		Miscellaneous Income
		2 Royalties \$			
		3 Other income \$	4 Federal income tax withheld \$		
PAYER'S federal identification number	RECIPIENT'S identification number	5 Fishing boat proceeds \$	6 Medical and health care payments \$	Copy B For Recipient This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.	
RECIPIENT'S name Street address (including apt. no.) City, state, and ZIP code		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$		
		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/> \$	10 Crop insurance proceeds \$		
		11	12		
Account number (see instructions)		13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15a Section 409A deferrals \$	15b Section 409A income \$	16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC

(keep for your records)

Department of the Treasury - Internal Revenue Service

Instructions for Payer

General and specific form instructions are provided as separate products. The products you should use to complete Form 1099-MISC are the 2012 General Instructions for Certain Information Returns and the 2012 Instructions for Form 1099-MISC. A chart in the general instructions gives a quick guide to which form must be filed to report a particular payment. To order these instructions and additional forms, visit IRS.gov or call 1-800-TAX-FORM (1-800-829-3676).

Caution: *Because paper forms are scanned during processing, you cannot file with the IRS Forms 1096, 1097, 1098, 1099, 3921, 3922, or 5498 that you print from the IRS website.*

Due dates. Furnish Copy B of this form to the recipient by January 31, 2013. The due date is extended to February 15, 2013, if you are reporting payments in boxes 8 or 14.

File Copy A of this form with the IRS by February 28, 2013. If you file electronically, the due date is April 1, 2013. To file electronically, you must have software that generates a file according to the specifications in Pub. 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically. IRS does not provide a fill-in form option.

Need help? If you have questions about reporting on Form 1099-MISC, call the information reporting customer service site toll free at 1-866-455-7438 or 304-263-8700 (not toll free). For TTY/TDD equipment, call 304-579-4827 (not toll free). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern time.

Instructions for Recipient

Recipient's identification number. For your protection, this form may show only the last four digits of your social security number (SSN), individual taxpayer identification number (ITIN), or adoption taxpayer identification number (ATIN). However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Amounts shown may be subject to self-employment (SE) tax. If your net income from self-employment is \$400 or more, you must file a return and compute your SE tax on Schedule SE (Form 1040). See Pub. 334 for more information. If no income or social security and Medicare taxes were withheld and you are still receiving these payments, see Form 1040-ES (or Form 1040-ES(NR)). Individuals must report these amounts as explained in the box 7 instructions on this page. Corporations, fiduciaries, or partnerships must report the amounts on the proper line of their tax returns.

Form 1099-MISC incorrect? If this form is incorrect or has been issued in error, contact the payer. If you cannot get this form corrected, attach an explanation to your tax return and report your income correctly.

Box 1. Report rents from real estate on Schedule E (Form 1040). However, report rents on Schedule C (Form 1040) if you provided significant services to the tenant, sold real estate as a business, or rented personal property as a business.

Box 2. Report royalties from oil, gas, or mineral properties, copyrights, and patents on Schedule E (Form 1040). However, report payments for a working interest as explained in the box 7 instructions. For royalties on timber, coal, and iron ore, see Pub. 544.

Box 3. Generally, report this amount on the "Other income" line of Form 1040 (or Form 1040NR) and identify the payment. The amount shown may be payments received as the beneficiary of a deceased employee, prizes, awards, taxable damages, Indian gaming profits, or other taxable income. See Pub. 525. If it is trade or business income, report this amount on Schedule C or F (Form 1040).

Box 4. Shows backup withholding or withholding on Indian gaming profits. Generally, a payer must backup withhold if you did not furnish your taxpayer identification number. See Form W-9 and Pub. 505 for more information. Report this amount on your income tax return as tax withheld.

Box 5. An amount in this box means the fishing boat operator considers you self-employed. Report this amount on Schedule C (Form 1040). See Pub. 334.

Box 6. For individuals, report on Schedule C (Form 1040).

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If the amount in this box is SE income, report it on Schedule C or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare tax. If you believe you are an employee and cannot get the payer to correct this form, report the amount from box 7 on Form 1040, line 7 (or Form 1040NR, line 8). You must also complete Form 8919 and attach it to your return. If you are not an employee but the amount in this box is not SE income (for example, it is income from a sporadic activity or a hobby), report it on Form 1040, line 21 (or Form 1040NR, line 21).

Box 8. Shows substitute payments in lieu of dividends or tax-exempt interest received by your broker on your behalf as a result of a loan of your securities. Report on the "Other income" line of Form 1040 (or Form 1040NR).

Box 9. If checked, \$5,000 or more of sales of consumer products was paid to you on a buy-sell, deposit-commission, or other basis. A dollar amount does not have to be shown. Generally, report any income from your sale of these products on Schedule C (Form 1040).

Box 10. Report this amount on Schedule F (Form 1040).

Box 13. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See the Form 1040 (or Form 1040NR) instructions for where to report.

Box 14. Shows gross proceeds paid to an attorney in connection with legal services. Report only the taxable part as income on your return.

Box 15a. May show current year deferrals as a nonemployee under a nonqualified deferred compensation (NQDC) plan that is subject to the requirements of section 409A, plus any earnings on current and prior year deferrals.

Box 15b. Shows income as a nonemployee under an NQDC plan that does not meet the requirements of section 409A. This amount is also included in box 7 as nonemployee compensation. Any amount included in box 15a that is currently taxable is also included in this box. This income is also subject to a substantial additional tax to be reported on Form 1040 (or Form 1040NR). See "Total Tax" in the Form 1040 (or Form 1040NR) instructions.

Boxes 16–18. Shows state or local income tax withheld from the payments.

1099-C Cancellation of Debt

We have been seeing more of these 1099-C Cancellation of debt forms over the past few years. In many cases people who became underwater on their mortgages have had debt cancelled. Cancellation of debt may result in ordinary income, income from the sale of assets, or both. The rules regarding the many different situations where cancellation of debt income occurs are extensive and beyond the scope of this course. Each individual situation is unique and careful analysis of the facts and circumstances must be made to determine the proper income tax return treatment of the transaction. We will note that in many cases if a taxpayers main home is foreclosed upon the taxpayer may be able to exclude all or a portion of the cancellation of debt income. Bankruptcy and insolvency as well as other issues can also create exclusions of all or a part of the taxable portion of the cancellation of debt income.

☐ CORRECTED (if checked)

CREDITOR'S name, street address, city, state, ZIP code, and telephone no.		1 Date of identifiable event	OMB No. 1545-1424
		2 Amount of debt discharged \$	2012 Form 1099-C
		3 Interest if included in box 2 \$	
CREDITOR'S federal identification number	DEBTOR'S identification number	4 Debt description	
DEBTOR'S name			
Street address (including apt. no.)		5 If checked, the debtor was personally liable for repayment of the debt <input type="checkbox"/>	
City, state, and ZIP code			
Account number (see instructions)		6 Identifiable event code	7 Fair market value of property \$

Cancellation of Debt

Copy B
For Debtor
This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.

Form **1099-C** (keep for your records) Department of the Treasury - Internal Revenue Service

Instructions for Debtor

You received this form because a Federal Government agency or an applicable financial entity (a lender) has discharged (canceled or forgiven) a debt you owed, or because an identifiable event has occurred that either is or is deemed to be a discharge of a debt of \$600 or more. If a creditor has discharged a debt you owed, you are required to include the discharged amount in your income, even if it is less than \$600, on the "Other income" line of your Form 1040. However, you may not have to include all of the canceled debt in your income. There are exceptions and exclusions, such as bankruptcy and insolvency. See Pub. 4681, available at IRS.gov, for more details. If an identifiable event has occurred but the debt has not actually been discharged, then include any discharged debt in your income in the year that it is actually discharged, unless an exception or exclusion applies to you in that year.

Debtor's identification number. For your protection, this form may show only the last four digits of your SSN, ITIN, or ATIN. However, the issuer has reported your complete identification number to the IRS, and, where applicable, to state and/or local governments.

Account number. May show an account or other unique number the creditor assigned to distinguish your account.

Box 1. Shows the date the earliest identifiable event occurred or, at the creditor's discretion, the date of an actual discharge that occurred before an identifiable event. See the code in box 6.

Box 2. Shows the amount of debt either actually or deemed discharged. **Note.** If you do not agree with the amount, contact your creditor.

Box 3. Shows interest if included in the debt reported in box 2. See Pub. 4681 to see if you must include the interest in gross income.

Box 4. Shows a description of the debt. If box 7 is completed, box 4 also shows a description of the property.

Box 5. Shows whether you were personally liable for repayment of the debt when the debt was created or, if modified, at the time of the last modification. See Pub. 4681 for reporting instructions.

Box 6. May show the reason your creditor has filed this form. The codes in this box are described in more detail in Pub. 4681. A—Bankruptcy; B—Other judicial debt relief; C—Statute of limitations or expiration of deficiency period; D—Foreclosure election; E—Debt relief from probate or similar proceeding; F—By agreement; G—Decision or policy to discontinue collection; H—Expiration of nonpayment testing period; or I—Other actual discharge before identifiable event.

Box 7. If, in the same calendar year, a foreclosure or abandonment of property occurred in connection with the cancellation of the debt, the fair market value (FMV) of the property will be shown, or you will receive a separate Form 1099-A. Generally, the gross foreclosure bid price is considered to be the FMV. For an abandonment or voluntary conveyance in lieu of foreclosure, the FMV is generally the appraised value of the property. You may have income or loss because of the acquisition or abandonment. See Pub. 4681 for information about foreclosures and abandonments. If the property was your main home, see Pub. 523 to figure any taxable gain or ordinary income.

Future developments. The IRS has created a page on IRS.gov for information about Form 1099-C and its instructions, at www.irs.gov/form1099c. Information about any future developments affecting Form 1099-C (such as legislation enacted after we release it) will be posted on that page.

Instructions for Creditor

General and specific form instructions are provided as separate products. The products you should use to complete Form 1099-C are the 2012 General Instructions for Certain Information Returns and the 2012 Instructions for Forms 1099-A and 1099-C. A chart in the general instructions gives a quick guide to which form must be filed to report a particular payment. To order these instructions and additional forms, visit IRS.gov or call 1-800-TAX-FORM (1-800-829-3676).

Caution: *Because paper forms are scanned during processing, you cannot file Forms 1096, 1097, 1098, 1099, 3921, 3922, or 5498 that you print from the IRS website.*

Due dates. Furnish Copy B of this form to the debtor by January 31, 2013.

File Copy A of this form with the IRS by February 28, 2013. If you file electronically, the due date is April 1, 2013. To file electronically, you must have software that

generates a file according to the specifications in Pub. 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically. IRS does not provide a fill-in form option.

Need help? If you have questions about reporting on Form 1099-C, call the information reporting customer service site toll free at 1-866-455-7438 or 304-263-8700 (not toll free). For TTY/TDD equipment, call 304-579-4827 (not toll free). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern time.

Future developments. The IRS has created a page on IRS.gov for information about Form 1099-C and its instructions, at www.irs.gov/form1099c. Information about any future developments affecting Form 1099-C (such as legislation enacted after we release it) will be posted on that page.

1099-K Merchant Card and third Party Network Payments

This is a new 1099 form for 2011. It is issued by Credit Card Processing companies to their merchant accounts. It is also issued by certain third party payment processors such as EBAY, Paypal, or Amazon. It is intended to increase compliance reporting from businesses who may not report all their credit card receipts. In practice this will be an amount nearly impossible to reconcile by most businesses.

Businesses who report on Schedule C, form 1065, form 1120, or form 1120S will see a new area in the income reporting portion of their returns this in 2011. It is where the amount reported on the 1099-K is intended to be reported. You will also see that on those forms it says for 2011 enter zero. Much of the information included in the 1099-K would not have been included by the businesses required to report it in their gross receipts. Items such as deposits, sales taxes, tips, refunds, and other fees would all be included on the 1099-K but a business ordinarily would not include those amounts in their gross income.

A law firm could have retainers as well as other funds which were not income appear on the 1099-K.

Many small businesses lack the capability to separate amounts charged by credit card and will issue 1099's to vendors for amounts they paid with credit cards creating a double reporting problem. This would create a reconciliation nightmare and the variances which would undoubtedly show up on tax returns would trigger red flags and even audits at the IRS. At the least it would create volumes of correspondence between taxpayers and the IRS. On February 9, 2012 IRS Deputy Commissioner Steven Miller told the National Federation of Independent Businesses that the IRS has agreed to strike the requirement to reconcile the 1099-K to its income. He further stated "The IRS has no intention of requiring reconciliation in future years". The lines for 1099-K form information remains on income tax returns although they say to enter zero for 2011 and most tax software will not accept entries to those lines without an override. It is not clear yet exactly what reporting requirements will be for future years, but the indication is that the lines related to 1099-K will be removed from the forms for future years.

The IRS has not made any indication that it will eliminate the need for 1099-K forms. We can probably expect to continue to see them issued in future years.

☐ CORRECTED

FILER'S name, street address, city, state, ZIP code, and telephone no.		FILER'S federal identification no.	OMB No. 1545-2205	Payment Card and Third Party Network Transactions
		PAYEE'S taxpayer identification no.	2012 Form 1099-K	
Check to indicate if FILER is a (an): Payment settlement entity (PSE) <input type="checkbox"/> Electronic Payment Facilitator (EPF)/Other third party <input type="checkbox"/> Check to indicate transactions reported are: Payment card <input type="checkbox"/> Third party network <input type="checkbox"/>		1 Gross amount of payment card/ third party network transactions \$	2 Merchant category code	Copy B For Payee This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if taxable income results from this transaction and the IRS determines that it has not been reported.
		3 Number of purchase transactions (optional)	4	
PAYEE'S name Street address (including apt. no.) City, state, and ZIP code	5a January \$	5b February \$		
	5c March \$	5d April \$		
	5e May \$	5f June \$		
PSE'S name and telephone number	5g July \$	5h August \$		
	5i September \$	5j October \$		
Account number (see instructions)	5k November \$	5l December \$		
	6	7	8	

Form **1099-K** (keep for your records) IRS.gov/form1099k Department of the Treasury - Internal Revenue Service

Instructions for Payee

You have received this form because you have either: (a) accepted payment cards for payments, or (b) received payments through a third party network that exceeded \$20,000 in gross total reportable transactions and the aggregate number of those transactions exceeded 200 for the calendar year. Merchant acquirers and third party settlement organizations, as payment settlement entities (PSE), must report the proceeds of payment card and third party network transactions made to you on Form 1099-K under Internal Revenue Code section 6050W. The PSE may have contracted with an electronic payment facilitator (EPF) or other third party payer to make payments to you.

If you have questions about the amounts reported on this form, contact the FILER whose information is shown in the upper left corner on the front of this form. If you do not recognize the FILER shown in the upper left corner of the form, contact the PSE whose name and phone number are shown in the lower left corner of the form above your account number.

See the separate instructions for your income tax return for using the information reported on this form.

Payee's taxpayer identification number. For your protection, this form may show only the last four digits of your social security number (SSN), individual taxpayer identification number (ITIN), or adoption

taxpayer identification number (ATIN). However, the issuer has reported your complete identification number to the IRS, and, where applicable, to state and/or local governments. **Note.** If your EIN is reported in this box, you should see the complete number in this format (XX-XXXXXXX).

Account number. May show an account or other unique number the PSE assigned to distinguish your account.

Box 1. Shows the aggregate gross amount of payment card/third party network transactions made to you through the PSE during the calendar year.

Box 2. Shows the merchant category code used for payment card/third party network transactions (if available) reported on this form.

Box 3. May show the number of purchase transactions (not including refund transactions) processed through the payment card/third party network. (Optional—The PSE is not required to complete this box for 2012.)

Boxes 5a–5l. Shows the gross amount of payment card/third party network transactions made to you for each month of the calendar year.

For the latest developments regarding Form 1099-K that may occur after this form is printed, visit www.irs.gov/form1099k.

**Instructions for Payment Settlement Entity/
Electronic Payment Facilitator/Other third
party**

General and specific form instructions are provided as separate products. The products you should use to complete Form 1099-K are the 2012 General Instructions for Certain Information Returns and the 2012 Instructions for Form 1099-K. A chart in the general instructions gives a quick guide to which form must be filed to report a particular payment. To order these instructions and additional forms, visit IRS.gov or call 1-800-TAX-FORM (1-800-829-3676).

Caution: *Because paper forms are scanned during processing, you cannot file Forms 1096, 1097, 1098, 1099, 3921, 3922, or 5498 that you print from the IRS website.*

Due dates. Furnish Copy B of this form to the recipient by January 31, 2013.

File Copy A of this form with the IRS by February 28, 2013. If you file electronically, the due date is April 1, 2013. To file electronically, you must have software that generates a file according to the specifications in Pub. 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically. The IRS does not provide a fill-in form option.

Need help? If you have questions about reporting on Form 1099-K, call the information reporting customer service site toll free at 1-866-455-7438 or 304-263-8700 (not toll free). For TTY/TDD equipment, call 304-579-4827 (not toll free). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern time.

For the latest developments regarding Form 1099-K that may occur after these instructions are printed, visit www.irs.gov/form1099k.

1099 PATR Patronage Dividends

We are going to cover this form briefly because the IRS has become more diligent in recent years in matching the income reported on this form. This form is used by cooperative organizations to report dividends paid to its member/owners. The largest and most common cooperative organizations are usually farm related and farmers are well acquainted with patronage dividends. Those not exposed to farm activities may not be as familiar with them. There are also a number of utility companies organized as cooperatives. Patronage Dividends are taxable income to the recipient if they arise from the conduct of a trade or business. If you are a member of a cooperative, but do not purchase from that cooperative in conjunction with a trade or business activity, then the dividends you receive from that cooperative are not taxable. Our recommendation is that you report patronage dividends on your tax return regardless of if they are taxable or not. If it is not a taxable patronage dividend, then add a line to the tax return backing out the dividend. If it is not reported on your tax return, there is more risk that you will receive correspondence from the IRS when they match the income to your tax return.

☐ CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Patronage dividends	OMB No. 1545-0118 2012 Form 1099-PATR
		\$	
		2 Nonpatronage distributions	
		\$	
		3 Per-unit retain allocations	
		\$	
PAYER'S federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld	
RECIPIENT'S name Street address (including apt. no.) City, state, and ZIP code		5 Redemption of nonqualified notices and retain allocations	6 Domestic production activities deduction
		\$	\$
			7 Investment credit
			\$
Account number (see instructions)		8 Work opportunity credit	9 Patron's AMT adjustment
		\$	\$
		10 Other credits and deductions	
		\$	

**Copy B
For Recipient**
This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

Form **1099-PATR** (keep for your records) Department of the Treasury - Internal Revenue Service

Instructions for Payer

General and specific form instructions are provided as separate products. The products you should use to complete Form 1099-PATR are the 2012 General Instructions for Certain Information Returns and the 2012 Instructions for Form 1099-PATR. A chart in the general instructions gives a quick guide to which form must be filed to report a particular payment. To order these instructions and additional forms, visit IRS.gov or call 1-800-TAX-FORM (1-800-829-3676).

Caution: *Because paper forms are scanned during processing, you cannot file Forms 1096, 1097, 1098, 1099, 3921, 3922, or 5498 that you print from the IRS website.*

Due dates. Furnish Copy B of this form to the recipient by January 31, 2013.

File Copy A of this form with the IRS by February 28, 2013. If you file electronically, the due date is April 1, 2013. To file electronically, you must have software that

generates a file according to the specifications in Pub. 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically. IRS does not provide a fill-in form option.

Foreign recipient. If the recipient is a nonresident alien, you may have to withhold federal income tax and file Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. See the Instructions for Form 1042-S and Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Need help? If you have questions about reporting on Form 1099-PATR, call the information reporting customer service site toll free at 1-866-455-7438 or 304-263-8700 (not toll free). For TTY/TDD equipment, call 304-579-4827 (not toll free). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern time.

Instructions for Recipient

Distributions you received from a cooperative may be includible in your income. Generally, if you are an individual, report any amounts shown in boxes 1, 2, 3, and 5 as income, unless nontaxable, on Schedule F (Form 1040), Schedule C (Form 1040), or Form 4835. See the Instructions for Schedule F (Form 1040) and Pub. 225 for more information.

Recipient's identification number. For your protection, this form may show only the last four digits of your social security number (SSN), individual taxpayer identification number (ITIN), or adoption taxpayer identification number (ATIN). However, the issuer has reported your complete identification number to the IRS, and, where applicable, to state and/or local governments.

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1. Shows patronage dividends paid to you during the year in cash, qualified written notices of allocation (at stated dollar value), or other property (not including nonqualified allocations). Any dividends paid on (1) property bought for personal use or (2) capital assets or depreciable property used in your business are not taxable. However, if (2) applies, reduce the basis of the assets by this amount.

Box 2. Shows nonpatronage distributions paid to you during the year in cash, qualified written notices of allocation, or other property (not including nonqualified written notices of allocation).

Box 3. Shows per-unit retain allocations paid to you during the year in cash, qualified per-unit retain certificates, or other property.

Box 4. Shows backup withholding. Generally, a payer must backup withhold if you did not furnish your taxpayer identification number to the payer. See Form W-9 for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows amounts you received when you redeemed nonqualified written notices of allocation and nonqualified per-unit retain allocations. Because these were not taxable when issued to you, you must report the redemption as ordinary income to the extent of the stated dollar value.

Box 6. Shows the deduction amount you may take based on your portion of patronage dividends or per-unit retain allocations (boxes 1 and 3) attributable to qualified production activities income. To claim the deduction amount, this amount must have been designated in a written notice sent to you from the cooperative within the payment period under section 1382(d). Enter on the appropriate line of Form 8903.

Boxes 7, 8, and 10. These boxes may show unused credits and deductions passed through to you by the cooperative. Generally, if your only source for a credit is from the cooperative, you are not required to complete the source credit form or attach it to Form 3800. Therefore, the following credits may be reported directly on Form 3800: the work opportunity credit (Form 5884); the small ethanol and cellulosic biofuel producer credits (Form 6478); the renewable electricity production credit (Form 8835, Part I); the Indian employment credit (Form 8845); and the energy efficient appliance credit (Form 8909). However, for the following credits, complete the forms shown and follow the instructions on the form for how to report the credit: the investment credit (Form 3468); the renewable electricity, refined coal, and Indian coal production credit (Form 8835, Part II); the biodiesel and renewable diesel fuels credit (Form 8864); and the agricultural chemicals security credit (Form 8931). For information on how to report other credits and deductions (including depreciation) that may be passed through to you, see the instructions for Schedules C and F (Form 1040) and Pub. 946.

Box 9. Shows the alternative minimum tax (AMT) adjustment passed through to you by the cooperative. Report this amount on Form 6251 on the appropriate line in Part I.

Form 1096

Form 1096 is the form which accompanies the 1099 forms which are provided to the Internal Revenue Service. It is a summary of the forms attached to it. You need to use one 1096 form for each type of 1099 you file. You do not combine different 1099 types on a single 1096.

Do Not Staple

6969

Form 1096 Department of the Treasury Internal Revenue Service	Annual Summary and Transmittal of U.S. Information Returns	OMB No. 1545-0108 <div style="font-size: 2em; font-weight: bold;">2012</div>
FILER'S name _____ Street address (including room or suite number) _____ City, state, and ZIP code _____		
Name of person to contact _____ Email address _____		Telephone number _____ Fax number _____
1 Employer identification number _____		2 Social security number _____
3 Total number of forms _____		4 Federal income tax withheld \$ _____
5 Total amount reported with this Form 1096 \$ _____		
6 Enter an "X" in only one box below to indicate the type of form being filed.		
7 If this is your final return, enter an "X" here <input type="checkbox"/>		
W-2G 32	1097-BTC 50	1098 81
1098-C 78	1098-E 84	1098-T 83
1099-A 80	1099-B 79	1099-C 85
1099-CAP 73	1099-DIV 91	1099-G 86
1099-H 71	1099-INT 92	
1099-K 10	1099-LTC 93	1099-MISC 95
1099-OID 96	1099-PATR 97	1099-Q 31
1099-R 98	1099-S 75	1099-SA 94
3921 25	3922 26	5498 28
5498-ESA 72	5498-SA 27	

For Official Use Only



Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ►

Title ►

Date ►

Instructions

Reminder. The only acceptable method of filing information returns with Internal Revenue Service/Information Returns Branch is electronically through the FIRE system. See Pub. 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically.

Purpose of form. Use this form to transmit paper Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G to the Internal Revenue Service. Do not use Form 1096 to transmit electronically. For electronic submissions, see Pub. 1220.

Caution. If you are required to file 250 or more information returns of any one type, you must file electronically. If you are required to file electronically but fail to do so, and you do not have an approved waiver, you may be subject to a penalty. For more information, see part F in the 2012 General Instructions for Certain Information Returns.

Who must file. The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Forms 1097, 1098, 1099, 3921, 3922, 5498, or W-2G. A filer is any person or entity who files any of the forms shown in line 6 above.

Enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form.

When to file. File Form 1096 as follows.

- With Forms 1097, 1098, 1099, 3921, 3922, or W-2G, file by February 28, 2013.
- With Form 5498, file by May 31, 2013.

Where To File

Send all information returns filed on paper with Form 1096 to the following:

If your principal business, office or agency, or legal residence in the case of an individual, is located in

Use the following three-line address

Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia

Department of the Treasury
Internal Revenue Service Center
Austin, TX 73301

Form **8809**

(Rev. May 2011)

Department of the Treasury
Internal Revenue Service**Application for Extension of Time
To File Information Returns**

(For Forms W-2, W-2G, 1042-S, 1097, 1098, 1099, 3921, 3922, 5498, and 8027)

► Requests for more than one filer must be filed through the Filing Information Returns
Electronically (FIRE) System. See *How to file* below.

OMB No. 1545-1081

Caution: Do not use this form to request an extension of time to (1) provide statements to recipients (see Extensions under Section M of the General Instructions for Certain Information Returns or see Part D, Section 4, of Publication 1220), (2) file Form 1042 (use Form 7004), or (3) file Form 1040 (use Form 4868).**1** Filer information. Type or print clearly in black ink.

Filer name _____

Address _____

City _____ State _____ ZIP Code _____

Contact name _____ Telephone number _____

Email address _____

2 Taxpayer identification number
(Enter your nine-digit number. Do not enter hyphens.)

--	--	--	--	--	--	--	--	--	--

3 Check this box only if you already received the automatic extension and you now need an additional extension. See instructions. ► ☐**4** Check the box(es) that apply. Do not enter the number of returns.

Form(s)	✓ here	Form(s)	✓ here	Form	✓ here
W-2		5498		8027	
1097, 1098, 1099, 3921, 3922, W-2G		5498-ESA			
1042-S		5498-SA			

5 If you checked the box on line 3, state in detail why you need an additional extension of time. You must give a reason or your request will be denied. If you need more space, attach additional sheets. Include your name and taxpayer identification number on each additional page.

Under penalties of perjury, I declare that I have examined this form, including any accompanying statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature ►

Title ►

Date ►

General Instructions**Purpose of form.** Use Form 8809 to request an extension of time to file any forms shown in line 4 for the current tax year.**How to file.** Extensions may be requested:

- Online by completing a fill-in Form 8809 through the FIRE system at <http://fire.irs.gov> for an automatic 30-day extension. Approvals are automatically displayed online if the request is made by the due date of the return.
- Electronically through the FIRE system in a file formatted according to the specifications in Publication 1220, Part D.
- On paper Form 8809, if the request is for one filer. Mail the form to the address shown in *Where to file*, later, or fax it to 1-877-477-0572 (toll free). Requesters will receive an approval or denial letter. You are encouraged to submit your request via the online fill-in form.

Where to file. Send Form 8809 to Internal Revenue Service, Information Returns Branch, Attn: Extension of Time Coordinator, 240 Mural Dr., Mail Stop 4360, Kearneysville, WV 25430.

If you are requesting an extension for more than one filer, you must submit the request electronically or online as a fill-in form.

Information Reporting Customer Service Site. If you have questions about Form 8809, you may call a toll-free number, 1-866-455-7438. You may still use the original telephone number, 304-263-8700 (not toll free). For TTY/TDD equipment, call 304-579-4827 (not toll free). The hours of operation are Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern time.Also, see Pub. 1220, Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935, and W-2G Electronically; and Pub. 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically. For additional information, see Topic 803, Waivers and Extensions, at www.irs.gov/taxtopics.**Note.** Specifications for filing Forms W-2, Wage and Tax Statement, electronically are only available from the Social Security Administration (SSA). Call 1-800-772-6270 for more information or visit the SSA's Employer W-2 Filing Instructions & Information page at www.socialsecurity.gov/employer.

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ABOUT THE AUTHORS

John Gallo, CPA, has an accounting and income tax preparation practice just north of Denver, Colorado handling a wide range of issues for clients. He works very closely with some of his larger clients serving both as an out of house and an in house Chief Financial Officer. He consults on process improvement for organizations – sometimes known as lean manufacturing or lean production – improving the efficiency and profitability of organizations in small steps. He assists individuals and small businesses with their financial and tax planning, both long term and short term. He teaches seminars and trains individuals in entrepreneurship and a variety of tax and business related subjects. He has run an accounting business for over 30 years as well as run a guide service, a photography business, a real estate investment business, a seminar and workshop business and assisted numerous other businesses in getting started. In the past he has taught skiing, avalanche awareness, climbing, mountain travel and taught instructors to teach those courses along with organizing programs for outdoor activities. He has written a number of operation plans, business plans, employee manuals, and procedure manuals. He has also written an avalanche field study handbook, several outdoor activity and equipment training guides, a backpacking guidebook, a family cookbook, and a book on starting new businesses in Colorado. He is currently writing a book providing financial advice and general life lessons for young people. He is also a Chartered Global Management Accountant. Mr. Gallo has attended the University of Denver and has a BSBA from Metropolitan State University, as well as received postgraduate training at the University of Colorado and the University of Denver Law School. You may contact him at john@johngallocpa.com.

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