



Worker Classification: Employee or Independent Contractor?

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A Note Before We Begin ...

- This presentation is designed to provide information – not specific determination for any situation.
- Worker classification determinations are made on a case-by-case basis, depending on specific facts and circumstances.



Worker Classification

- Workers you hire may be:
 - Independent contractors
 - Employees
- Determination



Basic Definitions

- Employee - Individual who performs services for you who is subject to your control regarding what will be done AND how it will be done.
- Independent Contractor - Individual who performs services for you – but you control only the work result.



Employee vs. Independent Contractor

Categories of Evidence:

1. Behavioral control
2. Financial control
3. Type of relationship of the parties



Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation systems
- Training provided by the business

Key fact to consider is whether business retains the RIGHT to control worker regardless of whether the business actually exercises that right



Financial Control

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Payment method



Type of Relationship

- Written contract
- Employee-type benefits provided
- Relationship Permanency
- Key business activity provided by services



Determination

- File Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding with IRS
- Six-month processing time



Form 8919

- Misclassified workers report their share of Social Security and Medicare on Form 8919, Uncollected Social Security and Medicare Tax on Wages
- Replaces Form 4137 for misclassified workers



Officer Compensation

- Officers are defined as employees for FICA, FUTA and income tax withholding
- Officers are not considered employees if they:
 - Perform no services or only minor services
 - Are not entitled to remuneration (direct or indirect)



Officer Compensation (continued)

- Distributions
- Loans to shareholders
- Payments of personal expenses
- Excessive rent payments
- Management fees
- Fringe benefits



Next Steps: Independent Contractor

- Contractor completes Form W-9
 - Social Security Number or Employer Identification Number required
- File Form 1099-NEC if \$600 or more paid for services during year
 - See instructions for exceptions



Form 1099-NEC

7171

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PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

OMB No. 1545-0116

Form **1099-NEC**

(Rev. January 2022)

For calendar year
20 ____

**Nonemployee
Compensation**

PAYER'S TIN

RECIPIENT'S TIN

1 Nonemployee compensation

\$

RECIPIENT'S name

2 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale ☐

3

Street address (including apt. no.)

4 Federal income tax withheld

\$

City or town, state or province, country, and ZIP or foreign postal code

5 State tax withheld

6 State/Payer's state no.

7 State income

Account number (see instructions)

2nd TIN not.

\$

\$

☐

\$

\$

Copy A
**For Internal Revenue
Service Center**
File with Form 1096.

For Privacy Act and
Paperwork Reduction Act
Notice, see the **current**
**General Instructions for
Certain Information
Returns.**

Form **1099-NEC** (Rev. 1-2022)

Cat. No. 72590N

www.irs.gov/Form1099NEC

Department of the Treasury - Internal Revenue Service

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Filing Information Returns Electronically – [IRS.gov/FIRE](https://www.irs.gov/FIRE)

- System for electronic filing of any of Form 1099s and some other information returns
- Later due dates for electronically filed forms
- Visit [IRS.gov](https://www.irs.gov), search Keyword “FIRE”
- Assistance
 - Call (866)-455-7438



Next Steps

- Employee completes Forms I-9 & W-4
- Employer
 - Withholds income tax, FICA
 - Completes Form W-2 at year end
 - Files Form W-2 with Social Security Administration
 - Visit **SSA.gov/employer** for free online Form W-2 filing & SSN verification service



Next Steps - Employer

- Responsible for depositing federal income tax withheld, FICA and FUTA taxes
- Deposit taxes using EFTPS
- Report wages, taxes by filing returns:
 - Form 941 or Form 944 for income tax, FICA
 - Form 940 for FUTA



Taxable Wages

- May be paid in cash or any other form
- Non-cash measured by fair market value
- Includes salaries, fees, tips, bonuses and commissions



Misclassification of Workers

- Determination
- Section 530 relief



§530 - Relief Requirements

- Reasonable basis
- Substantive consistency
- Reporting consistency



§530 - Reasonable Basis

- Judicial precedent
- Prior audit
- Industry practice
- Other reasonable basis



§503 Consistency Requirements

- Treat all workers in similar positions the same (substantive consistency)
- File all required returns – for example, Form 1099-NEC (reporting consistency)



Resources

- Visit [IRS.gov](https://www.irs.gov), search Keywords
 - “worker classification”
 - Handout containing worker classification URLs
 - Pub 1779 - Independent Contractor or Employee
 - Form SS-8, Determination of Worker Status
 - Pub 1976, Section 530 Relief Requirements



Form 1099-K Third Party Payment Network Transactions

(Card and Electronic payments)





Form 1099-K Overview

- The American Rescue Plan Act of 2021
- Impact
- No change to definition of reportable payments
- Implementation delayed one year

Form 1099-K



1010

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FILLER'S name, street address, city or town, state or province, country, ZIP [®] or foreign postal code, and telephone no.		FILLER'S TIN		OMB No. 1545-2205			
		PAYEE'S TIN		Form 1099-K			
		1a Gross amount of payment card/third party network transactions \$ _____		(Rev. January 2009) For calendar year 20____			
Check to indicate if FILLER is (are): 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"/>		Payment Card and Third Party Network Transactions Copy A For Internal Revenue Service Center File with Form 1098. For Privacy Act and Paperwork Reduction Act Notice, see the current General Instructions for Certain Information Returns.			
PAYEE'S name		1b Card Not Present transactions \$ _____				2 Merchant category code	
Street address (including apt. no.) City or town, state or province, country, and ZIP [®] or foreign postal code		3 Number of payment transactions				4 Federal income tax withheld \$ _____	
		5a January \$ _____				5b February \$ _____	
		5c March \$ _____				5d April \$ _____	
		5e May \$ _____		5f June \$ _____			
5g July \$ _____		5h August \$ _____		For Privacy Act and Paperwork Reduction Act Notice, see the current General Instructions for Certain Information Returns.			
5i September \$ _____		5j October \$ _____					
5k November \$ _____		5l December \$ _____					
PAYEE'S name and telephone number		6 State _____		7 State identification no. _____			
Account number (see instructions)		2nd TIN no. <input type="checkbox"/>		8 State income tax withheld \$ _____			
				\$ _____			

Form **1099-K** (1/01, 1-2022)

Gen. No. 5411015

www.irs.gov/efile

Department of the Treasury - Internal Revenue Service

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- **Who could receive a Form 1099-K because of the lower threshold**
 - Gig workers
 - Sellers of goods and services, or personal items
 - Property rental through third party apps
 - Individuals earning money from a side hustle



Friends and Family Transactions

- Money received as a gift or for reimbursement is not required to be reported on a Form 1099-K
- **Examples:**
 - \$650 received as a gift from a family member for college expenses through a payment app
 - \$1,000 received from a friend to pay their portion of a trip through a payment app
 - \$601 received as wedding gifts through a payment app



Payment Settlement Entity (PSE)

- “An entity that makes payments in settlement of a payment card transaction or third party network transaction”
- Payment card threshold is \$0



Third Party Settlement Organization (TPSO)



- “Central organization with a contractual obligation to make payments to participating payees (generally a merchant or business) of third party network transactions”
- Threshold is more than \$600 for calendar years beginning after December 31, 2022



Form 1099-K and Schedule C

- Gig workers who receive a Form 1099-K
- Income reported on Schedule C
- Net profit reported on Schedule SE
- Estimated tax payments may be necessary



Sale of a Personal Item

- Calculating gain or loss
- Sales price – purchase price = gain or loss
- Loss = Not deductible
- Gain = Reportable
- Form 8949, Sales and Other Dispositions of Capital Assets
- Form 1040, Schedule D, Capital Gains and Losses
- Publication 551, Basis of Assets



Sale of a Personal Item - Gain

- **Tickets cost \$500 and sold for \$900, gain = \$400**
- Use the following to report:
 - Form 8949, Sales and Other Dispositions of Capital Assets
 - Schedule D, Capital Gains and Losses



Sale of a Personal Item - Loss

- **Couch purchased for \$1,000, sold for \$600, loss = \$400**
- Might be reported on Form 1099-K
- Use one of the following to report:
 - Form 1040, Schedule 1, Additional Income and Adjustments to Income
 - Form 8949 and Form 1040, Schedule D



Loss on the Sale of a Personal Item – Schedule 1

- **Form 1040, Schedule 1, Part I – Line 8z, Other income**
 - List type and amount: Form 1099-K personal-use item sold at a loss \$600
- **Form 1040, Schedule 1, Part II – Line 24z, Other Adjustments**
 - List type and amount: Form 1099-K personal-use item sold at a loss \$600



Loss on Sale of Personal Item – Schedule D

- **Form 8949**
 - Enter \$600 in Column D as proceeds
 - Enter \$1,000 in Column E as cost or basis
 - Enter “L” in Column F
 - Enter \$400 in Column G as the adjustment amount
 - Results in \$0 gain or loss in Column H



Incorrect Form 1099-K Received

- Received a Form 1099-K by mistake
- Received a Form 1099-K with incorrect information
- Contact the issuer of Form 1099-K immediately
- Report gross proceeds on Schedule 1
- Label “Form 1099-K Received in Error”



Multiple PSEs

- **Who files Form 1099-K when there are multiple Payment Settlement Entities (PSEs)?**
 - Generally the PSE that submits the instructions to transfer the funds is obligated to file
 - The PSE that is obligated to file may designate another PSE if they agree in writing



Recordkeeping

- Monitor the progress of activities
- Identify sources of gross proceeds
- Track and record deductible expenses
- Review withholding and estimated tax options
- Keep track of basis
- Prepare the tax return



Form 1099-K Processing

- Increase in Form 1099-K filings next year
- Filing Information Returns Electronically (FIRE)
- Information Returns Intake System (IRIS)



Communication and Education

- Frequently asked questions on irs.gov – Understanding Your Form 1099-K
- QR Code





Social Media

- www.irs.gov/socialmedia
- YouTube
- Twitter
- Facebook
- Instagram
- LinkedIn
- e-news subscriptions



Form 1099-K IRS.gov resources

- Understanding your Form 1099-K
- Form 1099-K FAQs
- Gig Economy Tax Center
- Recordkeeping
- Estimated Tax Payments



Communications and Liaison **STAKEHOLDER LIAISON**



Stakeholder Liaison IMRS Discussion





Issue Management Resolution System



What is IMRS?

- Provides mechanism for raising concerns
 - IRS policies, practices and procedures
 - Systemic problems
- Facilitates issue identification, resolution and feedback



Issue Submission

- Gather all information
- Contact local stakeholder liaison staff
 - Visit [IRS.gov](https://www.irs.gov)
 - Search keyword “stakeholder liaison”





Contact Information

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