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Information Reporting & Withholding

Form 1099-NEC, Nonemployee Compensation





Who is Impacted

Any payors who in the course of their trade or business make payments of \$600 or more of nonemployee compensation will be interested in the revival of Form 1099-NEC, which will be used to report nonemployee compensation and indicate direct sales of \$5,000 or more of consumer products. This form will replace box 7 on Form 1099-MISC for the 2020 calendar year that will be reported in 2021.

What changed

Get in your DeLorean, put in your favourite cassette tape, and grab the Aqua-net, because in this article, we are traveling back in time to the year of the last known Form 1099-NEC, 1982! Once we walk through and reacclimate ourselves with that form, we will fast forward to 2015 to understand the rule changes and why we the IRS went retro. Finally, we move to the future in 2021 to take a look at the Draft Form 1099-NEC for the 2020 reporting year!

1982 (Mrs. Pac Man, Eye of the Tiger, and E.T.)

In 1982, we had a Form 1099-MISC, Miscellaneous Income, with only three boxes for rents (box 1), royalties (box 2), and prizes and awards (box 3). We also had a [1982 Form 1099-NEC](#), Nonemployee Compensation, which required only the following information:

- Payor's name, address, zip code, and Federal identifying number.
- Recipients identifying number.
- Recipient's name, address, and zip code.
- Box 1, Fees, commissions, and other compensation. (only one box for income!).

In 1983, we saw the Form 1099-NEC collapse into Form 1099-MISC, which also included income for the following (in addition to the prior three boxes):

- Box 4, Federal income tax withheld (to be used in 1984 for backup withholding).
- Box 5, Fishing boat proceeds.
- Box 6, Medical and health care payments.
- Box 7, Nonemployee compensation.
- Box 8, Payor made direct sales of \$5,000 or more of consumer products to buyer (recipient) for sale.

2015 (Taylor Swift, The Avengers)

In 2015, the Protecting Americans from Tax Hikes (PATH) Act changed some key rules that impact employer reporting. Specifically, section 201 states that the IRS cannot credit or refund any overpayments for a taxable year before February 15 if the person requesting the refund also claimed an Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC). These credits are important, because they apply to taxpayers earning wages as an employee or nonemployee. Currently, employers report employee wages on Form W-2 and nonemployee wages on Form 1099-MISC. The deadline for employers to furnish these forms to taxpayers is January 31 of the year following the year in which the wages were paid. This deadline is earlier than the deadline for the employer to file these forms with the IRS, which is February 28 for paper filings or March 31 for

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electronic filings. Due to this gap in time, a taxpayer could file a tax refund and request a refund early (because the employer had a deadline to furnish these forms by January 31), which would be well before the IRS receives the corresponding employer filing (due on February 28 or March 31, whether on paper or electronically). The IRS would not be able to cross reference the refund request with the actual wages reported by the employer. This gap in time left an opportunity for fraudulent refund requests and fabricated wages and withholdings.

As a solution to possible scamming and lost revenue due to fraud, the PATH Act required employers to submit Forms W-2 and 1099-MISC to the Social Security Administration (SSA) on January 31 to align with the date employers must furnish the same forms to employees or recipients. The PATH Act also set the refund issue date to February 15, to allow the IRS a chance to cross reference the employer reporting Forms 1099-MISC and W-2 with the employee or recipient tax returns.

This change began on January 1, 2017, but irritated taxpayers who claimed an EITC or ACTC, because the IRS was required to hold the entire amount of their refunds until February 15.

But now, we have another gap in time. Wages related to nonemployee compensation are reported on Form 1099-MISC along with certain payments of royalties, rents, prizes, awards, medical and health care benefits, crop insurance proceeds, just to name a few! The only type of payment on Form 1099-MISC that would be due on January 31 is nonemployee compensation. All of the other types of payments continue to be due on February 28 or March 31 whether on paper or electronically respectively. What a cluster! In the first year of applying these mixed due dates, IRS systems were unable to process batches of Forms 1099-MISC that included even just one report of nonemployee compensation. This caused an automatic blanket notice that the entire batch was subject to late payment penalties. To resolve this paradox, the IRS went back in time to 1982, so that they could revive and publish a Draft 2020 Form 1099-NEC. This new form would have its own due date, separate from the other income reported on Form 1099-MISC.

2020 (Who knows?!?!)

The new [Draft Form 1099-NEC](#) requires far more information than its predecessor and looks more like a current Form 1099-MISC. There are six boxes for income related information. The IRS also included a box for State information. Below is the information that will be required according to the draft form:

- Payor's name, street address, city or town, state or province, country, zip code or foreign postal code, and telephone number.
- Payor's taxpayer identification number (TIN).
- Recipient's (TIN).
- Recipient's name.
- Recipient's city or town, state or province, country, and zip code or foreign postal code.
- Account Number.
- Foreign Account Tax Compliance Act filing requirement checkbox (it will be interesting to understand why the IRS keeps this box for a form that will report mostly excepted nonfinancial income).
- 2nd TIN Notice checkbox.

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- Box 1, Nonemployee Compensation.
- Box 2, Payor made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale, checkbox.
- Box 3, (reserved, but why?).
- Box 4, Federal income tax withheld.
- Box 5, State tax withheld.
- Box 6, State/Payer's state number.
- Box 7, State income.
- Void and Corrected checkboxes.

Due dates:

- Furnish Copy B to the recipient by February 1, 2021.
- File Copy A with the IRS by February 1, 2021.

To file electronically, you must have software that generates a file according to the specifications in Publication 1220. The IRS does not provide a fill-in-form option for Copy A.

How to Implement

In considering the new Form 1099-NEC for the 2020 reporting season, here are a few items to consider:

- Look forward to a revised Form 1099-MISC for 2021! (possibly with no box 7 or 9). Be flexible, but confirm that vendors are prepared to adjust and update their applications to support a new Form 1099-MISC and Form 1099-NEC.
- Determine if your organization or trade association intends to comment on the draft form before September 30, 2019. If you suspect any issues with your processes or procedures, be sure to raise the idea of submitting comments to the appropriate people in your organization.
- Draft an explanation for payees that will receive the new Form 1099-NEC in 2021, so that they are aware and expect this form instead of a Form 1099-MISC. Coordinate with legal, relationship managers, and any others that may see or hear any payee impact related to this change.
- Make sure you update any relevant controls, approvals, or sign off procedures for making payments if yearend reporting is referenced.
- Be sure you have updated processes and procedures for reporting where you do find yourself making payments that will be reported on new forms.

Do you make payments of nonemployee compensation? Share your experiences with us in the comments section on [LinkedIn](#) or [email us](#)!

Resources

- [1982 Form 1099-NEC](#)
- [1982 Form 1099-MISC](#)
- [1983 Form 1099-MISC](#)
- [2020 Draft Form 1099-NEC](#)

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