

December 14, 2011

Dear Pietrasiuk, Kelley & Kelley Client:

RE: Important Changes to Forms W-9 and 1099-MISC Reporting

Over this past year many of you have heard of the increased 1099 filing requirements associated with business entities. While we are pleased to report that many of those changes were repealed, there is one significant 1099/W-9 enactment which may impact your company and you could be subject to penalties or backup withholding if you do not comply with the new requirements.

We will be working directly with companies for whom we prepare the Forms 1099 and would appreciate if you would review this information since it will be discussed with you in the near future. If your company prepares and files its own Forms 1099-MISC, please carefully review this information and contact us with any questions you may have regarding this or any other matter.

Revised Form W-9 "Request for Taxpayer Identification Number and Certification"

This form was revised by the IRS in December 2011. Before asking one of your vendors to complete the form, please review the date listed directly under the form number to ensure you have the correct revised form.



We have also made this form available to you on our website. Go to www.pkkcpa.com, then click on "client resources". Or you may obtain the form at www.irs.gov/pub/irs-pdf/fw9.pdf and download the revised form directly from the IRS website.

General definitions which may be helpful to understanding the new requirements

- A “disregarded entity” is an entity which is separate from its owner for liability purposes but the same as the owner for tax purposes. A “disregarded entity” may also be commonly referred to as a single-member LLC.
- A sole proprietorship (without electing LLC status) can NOT be a disregarded entity since the business is not separate from its owner.
- The primary changes discussed here will relate to the “disregarded entity” classification and reporting. Single-member LLC’s operating as a disregarded entity will need to provide the name used on their personal tax return and their individual social security number to the companies who make payment to them. Inversely, this change also affects companies who make payments to disregarded entities since they may need to obtain this information via Form W9. Disregarded entity businesses would typically file Form Schedule C with their individual tax return.

A little history and some useful information

- LLC’s were first introduced in the 1980’s and 1990’s. However, their popularity and use increased significantly over time as did a clearer understanding on how to treat these entities from a tax and liability perspective. The LLC entity type is widely used today.
- The federal government does NOT enforce LLC-specific tax laws. Instead, the owners of the LLC elect to be treated under various sections of existing tax law. The LLC status (Limited Liability Company) can attach to entities filing C Corporation, S Corporation, Partnership, or individual income tax returns.
- The laws regarding entity type, which cannot be determined solely by looking at the business name, are complicated. It is never wise to assume you do not need to issue a Form 1099 just because you see that the payment was made to an “Inc” or other identification for which you assume corporate status. WHEN IN DOUBT..... ISSUE FORM 1099! We discuss the \$600 filing requirement threshold, however, there is no penalty for filing a Form 1099 for less than the minimum required amount. It is wise and prudent to obtain Forms W-9 on every vendor to whom you make payment that provides services to your company (i.e. lawyer, consultant, lawn service, janitorial, etc.) and, if desired, prepare a Form 1099 to each one of those vendors.

Significant change to Form W-9 and also Form 1099-MISC

- “Disregarded entities” (commonly referred to as single-member LLC’s) that DO NOT file a separate corporate or partnership tax return are required to report their income under the name they use to file their personal tax return AND use their personal social security number. This is true even if their single-member LLC has obtained an EIN (employer identification number) for their business. Generally, these individuals will file their business taxes on a Schedule C form attached to their individual income tax return.
- When you are paying a sole proprietor (an individual who has not organized themselves under the LLC status) you may use either the owner’s social security number OR the employer identification number. However, the IRS has indicated a preference to use the social security number. Sole proprietorships typically file Schedule C with their individual income tax return and are NOT disregarded entities.
- When you have a single-member LLC in a parent/subsidiary relationship, the income information should be reported under the parent company EIN if Form 1099-MISC filing is required. This is not actually a change from the existing law, however, the revised Form W-9 clarifies that a disregarded entity can and may be different from the primary name on a filed tax return.

For matching and reference purposes, you should also include the “doing business as” or other applicable relevant identifying information on the Form 1099. Generally this information, if applicable, would be provided to you on the completed Form W-9.

Issues to consider and steps to take to comply with changes

- Review your prior 2 years of Forms 1099. Compare those Forms 1099 with the Forms W-9 you have in your files. You may need to expand the 2 year look back if your company sporadically uses vendors every few years. This is just a guide to try to compile an updated list of current vendors to which these changes may apply.
- The prior Form W-9 was revised back in 2007. The 3rd line on the page where it indicates to “check the appropriate box”. If limited liability company is marked and a “D” for disregarded entity is identified. You WILL NEED to obtain an updated Form W-9 unless the prior form listed the taxpayer’s name as social security number as the identifying information.

- If the prior Form W-9 indicates an individual/sole proprietor you may want to obtain a revised Form W-9 if the individual has used an employer ID number instead of a social security number. However, for the 2011 tax year, you are still permitted to use the EIN if you would like.
- If you issue a 1099 to a disregarded entity in a parent/subsidiary situation in which the single-member LLC is owned by a corporation or partnership, you may want to ask for clarification from the company to ensure that you are reporting under the parent company's EIN. Since this is not a law change you may already have the correct information in your current file Form W-9. However, we recommend that you thoroughly review this information to ensure it is accurate.
- Review your current accounting records for any company or persons to whom you have made payments over \$600. Request the company/person complete a Form W-9 and maintain that in your files if you do not currently have complete and accurate information in your files.

Services Pietrasiuk, Kelley and Kelley P.C. can provide

(Fees will be charged based on the level of service requested and the time to perform the requested service.)

- Prepare Forms 1099-MISC/1096 solely from information you provide or from information we obtain on your behalf should that service be requested.
- Obtain the required Form W-9 information from your vendors (we would need a list of vendors with their contact information provided by you).
- Our company could review your accounting records, determine potential 1099 recipient vendors, obtain required Forms W-9 information and prepare all required Forms 1099/1096.

Conclusion

Our company highly recommends that you print a copy of the revised Form W-9 and instructions and review them carefully. Please make special note on page 2 under the "Name" specific instructions as well as on page 3, Part I "Taxpayer Identification Number". There is also a small table on Page 4 which may be helpful to you to understand which name and number to request from your vendors. For our clients who operate under the single-member LLC "disregarded entity" status, you will be asked to provide personal information from the companies from whom you receive payment.

While these changes in reporting requirements can be time consuming to update, we encourage you to look at this as an opportunity to update all of your W-9 forms. We recommend sending the 4 page copy of the revised Form W-9 with a cover letter and highlight a few of the important sections. Please remember to include a self-addressed envelope, we all know from experience that this will speed up the response time and increase that you receive a reply.

Each time you create a new vendor in your accounting system, our company recommends you establish a procedure to receive Form W-9 information before that vendor is paid. This is a relatively easy system to create and follow. It also ensures that you will not find your company, at year end, attempting to obtain information from someone who would "prefer" to not receive a Form 1099. Keep in mind that issuing more Forms 1099 than required is acceptable. This is often easier for many companies who maintain detail 1099 reporting information in their accounting systems throughout the year.

This information has been provided to you to protect your company from penalties and potentially back up withholding provisions. While Pietrasiuk, Kelley and Kelley cannot conceivably cover every possible scenario relating to 1099 filing requirements we hope this outlines for you the general considerations.

Pietrasiuk, Kelley & Kelley truly appreciate the opportunity to work with each of you. Please do not hesitate to call us should you have any specific questions or require our assistance.

Sincerely,

Pietrasiuk, Kelley & Kelley PC