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THE TAX LAWYER

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IRS Form 1099 Or Form W-2?

Some people ask '1099 or W-2?' as if they were asking how you take your coffee. With all the tax forms coming these days, it's good to remember the difference. Form W-2 is for employees, and includes details about tax withholding, remittance to the IRS and state taxing authorities. In contrast, Form 1099 reports payments to independent contractors. Any Form W-2 or 1099 you receive *also* goes to the IRS. [IRS uses Forms 1099](#) for easy computer matching of Form 1099 data against tax returns. But how do you know which form? We'll come back to that question.

The deadline is Jan. 31 for mailing Forms 1099 to taxpayers, but the payer generally has until the end of February to send all its Forms 1099 to the IRS. This year (2017, for 2016 payments), the IRS moved up the filing date for Forms 1099-MISC reporting non-employee compensation in box 7. The reporting date to the IRS for those forms is January 31, the same as the due date for forms to be issued to recipients. If there is an error on a Form 1099 [tell the payer immediately](#).

9595		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0047	
PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Items	2016	Miscellaneous Income	
		\$	Form 1099-MISC	Copy A For Internal Revenue Service Center	
PAYER'S federal identification number		2 Royalties	3 Other income	4 Federal income tax withheld	File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2016 General Instructions for Certain Information Returns.
RECIPIENT'S identification number		\$	\$	5 Fishing boat proceeds	
RECIPIENT'S name		\$	\$	6 Rollover without payments	
Street address (including apt. no.)		7 Nonemployee compensation	8 Substitute payments in lieu of dividends or interest	9 Excess golden-parachute payments	
City or town, state or province, county, and ZIP or foreign postal code		\$	\$	10 Crop insurance proceeds	
Account number (see instructions)		11	12	13 Gross proceeds paid to an attorney	
FATCA filing requirement <input type="checkbox"/>		14 Excess golden-parachute payments	15 Gross proceeds paid to an attorney	16 State tax withheld	
2nd TIN non-requirement <input type="checkbox"/>		\$	\$	17 State/Payer's state no.	
18a Section 501(c)(3) details		\$	\$	18 State income	
18b Section 501(c)(3) income		\$	\$	\$	
Form 1099-MISC (Cat. No. 14425J)		www.irs.gov/form1099misc		Department of the Treasury - Internal Revenue Service	

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There may be time to correct it *before* sending it to the IRS. If the payer has already dispatched the incorrect form to the IRS, ask the payer to send in a corrected form. But there's hardly anything more fundamental than the difference between employee and independent contractor. Some workers sue their 'employers' over this, claiming they were misclassified and are *really* employees, no matter what they might be called. Sometimes, the IRS and other agencies go after companies too for the same thing.

You probably can't do much at tax time on such big questions. However, you can check out IRS tax form [Form 8919](#). You can also check out what the IRS says about [uncollected Social Security and medicare tax](#). Employers should [know if they are hiring independent contractors or employees](#). IRS says you might need [Form 8919](#) if you thought you were getting a W-2. The IRS might even have already determined (via Form SS-8) that you are an employee. If you're an employee, taxes have to be taken out. That means you'll receive an [IRS Form W-2](#).

In contrast, if you're an independent contractor, you'll get full pay with no deductions. Of course, you are liable for your *own* taxes. But what if you're the employer not the recipient? This is one of the more momentous decisions in business. It goes beyond taxes, covering workers' compensation, unemployment insurance, state and federal wage and hour laws, pension laws, nondiscrimination laws and more. It also impacts employer liability, since employees are *agents* of the company.

It's hard to think of a more pivotal issue. Yet this decision is made thousands of times a day all over America. If you're the worker, you may be tempted to say "1099," figuring you'll get a bigger check that way. You may in the short run, but you'll actually owe *higher* taxes. As an independent contractor, you not only owe income tax, but self-employment tax too. In contrast, if you're an employee, you pay only one-half the Social Security tax.

Apart from tax law, employee status carries a host of nondiscrimination laws, pension and benefits laws and wage and hour protections. They all apply to employees but not to independent contractors. For all of these reasons, employers have big incentives to use independent contractors. Many start ups and tech companies rely on the branding that uniformity can provide, but don't want all of the costs and liabilities of employees.

The answer in many cases is independent contractors. Done carefully, such arrangements can work fine and be legitimate. However, some employers push the envelope to treat workers as independent contractors who are clearly

employees if anyone bothers to look. That's where the IRS and many other agencies come in. Government entities and private parties in lawsuits have reason to probe. There are several prevailing legal standards, but many of them boil down to how much control company has over worker. Yet the area is nuanced, and [some control won't convert independent contractors to employees](#). The area is heating up, with many believing that inappropriate worker status determinations are a major tax loophole. If you're an employer, be careful.

For alerts to future tax articles, email at Wood@WoodLLP.com. This discussion is not legal advice.