

The Bandy Articles

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Form 1099 Penalties are REAL and they are EXPENSIVE!

This is what happened to one of our clients during a one year IRS tax return audit that evolved into a three year 1099 audit. During the tax return audit process, the auditor requested copies of the client prepared 1099s filed with the IRS and discovered errors and omissions on the client's forms. Due to the auditor's findings, the audit was expanded by two additional years to audit 1099s only.

Auditors are savvy. They request your QuickBooks or other software files and the administrative password. They analyze and sort through your accounts and perform their own analysis to determine which vendors should have received a 1099. It is up to you to defend why you did not issue a 1099 to any given vendor. Documentation is very important!

Errors or incomplete information on 1099s, the lack of due diligence in gathering the information to put on the 1099s, and not filing 1099s when required all contribute to the penalty calculation.

If you fail to file a 1099 or file a 1099 with an error and do not correct it, you will be penalized TWICE: once for failing to file with the IRS (Failure to File Penalty) and AGAIN for failing to send the 1099 to the recipient (Failure to Furnish Penalty). Below is a table of penalties the IRS sent to our client:

"... you will be penalized TWICE..."

Information Return Penalties (2015, 2016, 2017)

Failure to File Penalty - IRC section 6721							
Year	Number of Failures	Intentional Disregard	Code Section	Penalty Rate	Maximum, if applicable	Unreported amounts	Total penalty
2015	16	NO	6721(a)	\$260	1,500,000		\$4,160
2016	46	NO	6721(a)	\$260	1,500,000		\$11,960
2017	32	NO	6721(a)	\$260	1,500,000		\$8,320

Total \$24,440

Failure to Furnish Penalty - IRC section 6722							
Year	Number of Failures	Intentional Disregard	Code Section	Penalty Rate	Maximum, if applicable	Unreported amounts	Total penalty
2015	16	NO	6722(a)	\$260	1,500,000		\$4,160
2016	46	NO	6722(a)	\$260	1,500,000		\$11,960
2017	32	NO	6722(a)	\$260	1,500,000		\$8,320

Total \$24,440

Grand Total \$48,880

Each incorrectly filed 1099 can be penalized up to \$520! Let's say you failed to file twenty 1099s, this may result in a total penalty of \$10,400: \$5,200 for Failure to File with the IRS and another \$5,200 for Failure to Furnish to the recipient. These penalties add up quickly and remember, penalties are NOT tax deductible; therefore, \$10,400 is just cash out of your pocket! It is also important to know that, during audits, both the IRS and the FTB can disallow deductions in excess of \$599 when the 1099s have not been filed.

The IRS can also assess an additional penalty called Intentional Disregard, which is when you knowingly choose not to file or ignore the duty to file a timely and correct 1099. For Intentional Disregard, the penalty is the greater of \$530 or 10% of the amount that should have been reported on the 1099. This is huge and there is no maximum dollar amount limitation for this penalty.

If you filed a 1099 and discover there was an error, we urge you to correct it and reissue it to the IRS and recipient as soon as possible. If you were waiting for the taxpayer's ID number and receive it after the deadline, it is better to file late than not at all. The 1099s are to be provided to the Internal Revenue Service and recipients by January 31, 2019 for the 2018 tax year. The 2018 late filing fees for small businesses with gross receipts of \$5 million or less are:

- Not more than 30 days late : \$50 per form (\$187,500 maximum)
- More than 31 days late up through August 1st: \$100 per form (\$536,000 maximum)
- After August 1st or not at all: \$260 per return (\$1,072,500 maximum)

Some common 1099 filing errors are:

- Reporting an incorrect SSN or EIN
- Not reporting SSN or EIN
- Reporting a misspelled name
- Reporting an incorrect dollar amount
- Filing on paper when you were required to file electronically
- Not filing on paper forms that are machine readable

If you have not already done so, we HIGHLY RECOMMEND that you:

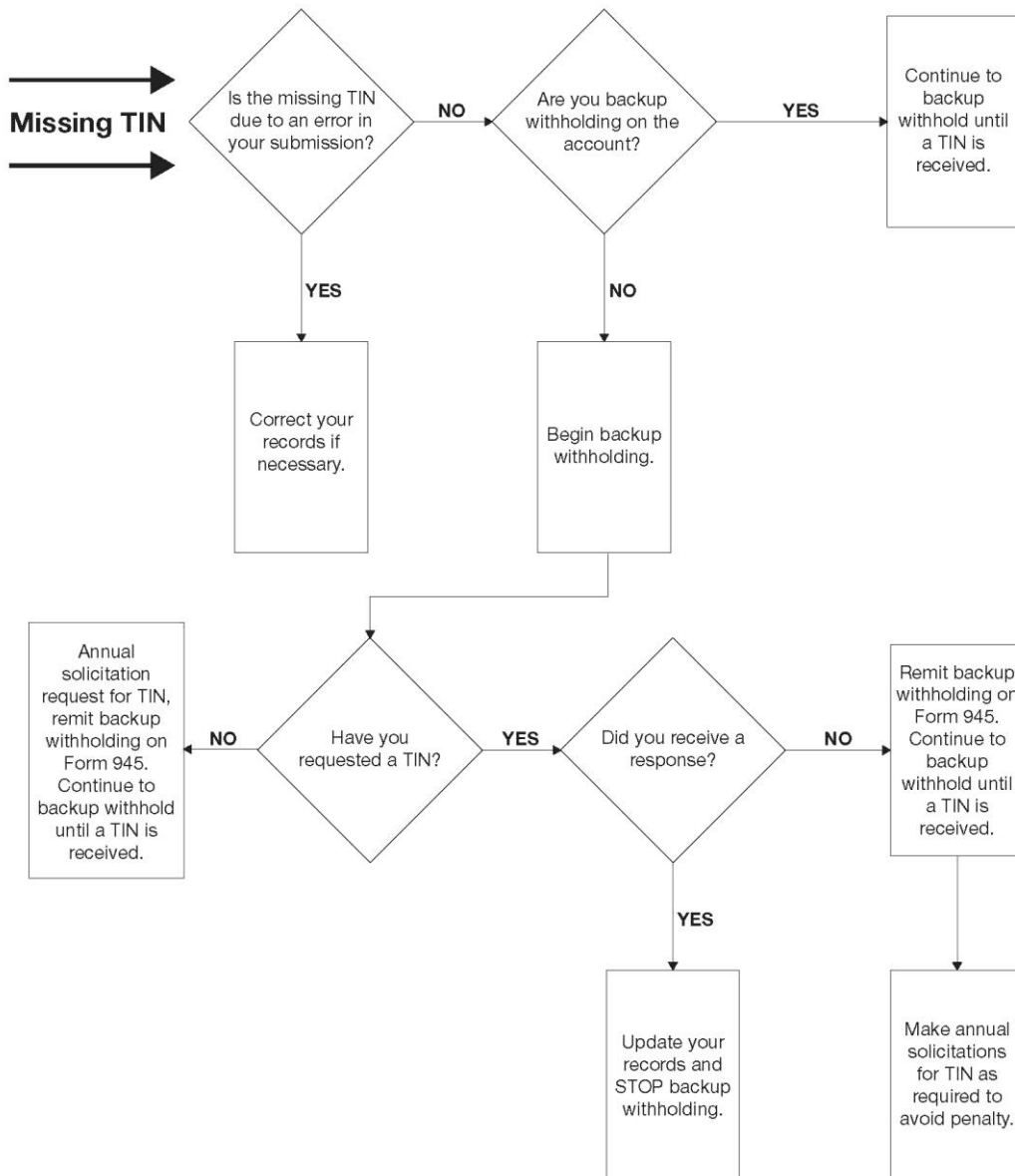
- Obtain a Form W-9 BEFORE any money is paid out to your vendors whom you will pay \$600 or more during the year.
- Make sure you have all completed Form W-9s on file now.
- If you are utilizing the mapping 1099 feature in QuickBooks, verify that all 1099 type accounts and vendors are set up properly and that any new accounts and new vendors get set up properly in the mapping feature. Your failure to properly map an account or vendor will NOT get you out of a penalty situation.

*“Obtain a Form W-9
BEFORE any money is
paid out to your
vendors whom you will
pay \$600 or more
during the year.”*

If a vendor refuses to provide their Tax Identification Number (TIN), which is either the SSN for an individual or an EIN for a business, you are to begin backup withholding immediately. The backup withholding rate is 24% of the payment being made to the vendor. You, as the payer, are required to deduct 24% of the amount being paid to the vendor and send that amount to the Federal government in the form of a federal tax deposit. You must continue with the backup withholding until you receive the requested Form W-9. See the following flowchart and call us if you need assistance.

"If a vendor refuses to provide their Tax Identification Number (TIN), you are to begin backup withholding immediately."

FLOWCHARTING for MISSING TINs



Are you required to file a Form 1099?

The Internal Revenue Service requires individuals, partnerships, corporations, and other organizations engaged in a trade or business to provide 1099s to recipients of the following types of payments made during a calendar year:

- Payments of \$10 or more, relating to interest, stock dividends or distributions, and royalties
- Payments of \$600 or more for nonemployee services, attorneys, rent, providers of health and medical services, liquidation distributions, or crop insurance proceeds
- Payments (regardless of the amount) for acquisition or abandonment of property secured for debt, broker or barter transactions, pension distributions, proceeds from sale or exchange of real estate, or distributions from an IRA

Payments made to corporations (other than payments for medical/health and legal services) are not reportable.

Payments made with a credit card to a vendor are not reportable by you. For example, if you pay your janitorial service or your rent on your credit card, you do not need to issue 1099s to those vendors. Only cash and check payments are reportable on 1099s.

The lack of filing 1099s, an information return, can rack up the penalties. Gone are the days of filing 1099s for only the vendors that you have information for at the time of filing and the thought of "Well, at least I filed some 1099s". You, as the payer, must make continued efforts to gather the correct information from your vendor and even do the backup withholding until the vendor provides the correct information. If you do not take these steps, you will be risking substantial penalties!

These 1099 audits are real and the penalties are expensive!

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