

AMERICAN PAYROLL ASSOCIATION

June 24, 2022

Andres Garcia
Internal Revenue Service
1111 Constitution Avenue, NW - Room 6526
Washington, DC 20224
omb.unit@irs.gov

Re: Proposed Collection; Comment Request for Form 1099-MISC; 87 Fed. Reg. 25568 (April 29, 2022); OMB Number 1545-0115 — Miscellaneous Information

Dear Andres Garcia:

The American Payroll Association (APA)¹ brings to the attention of the Internal Revenue Service (IRS) problems and recommended solutions regarding duplicate information reported on the Form 1099-MISC, *Miscellaneous Information*, and Form 1099-NEC, *Nonemployee Compensation*.

The APA recommends that the reporting of nonemployee excess golden parachute payments and Internal Revenue Code § 409A noncompliance (nonqualified deferred compensation) be placed only on a single form, Form 1099-NEC. Payroll professionals are not asking the IRS to eliminate either Forms 1099-MISC or 1099-NEC. Instead, the APA is asking the IRS for the following:

1. Move Box 14 (excess golden parachute payments) on Form 1099-MISC to Form 1099-NEC;

¹ The APA is a nonprofit association representing more than 20,000 payroll professionals throughout the United States. Some APA members work for payroll service providers who, in turn, process the payrolls for another 1.5 million employers, representing an aggregate total of one-third of the private-sector workforce. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Relations Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

2. Move Boxes 12 (IRC § 409A deferrals) and 15 (nonqualified deferred compensation) from Form 1099-MISC to Form 1099-NEC; and
3. Clarify in the instructions whether reporting of nonemployee nonqualified deferred compensation plan distributions is required only in Box 1 on Form 1099-NEC and not reported in Box 15 on Form 1099-MISC.

Duplicate Reporting of Golden Parachute Payments

A nonemployee's golden parachute payment is currently reported on both Forms 1099-NEC and 1099-MISC when the payment is subject to the excess golden parachute payment excise tax rules.

The following explains this double reporting:

- Golden parachute payments are reported on Form 1099-NEC, Box 1 (*Instructions for Forms 1099-NEC and 1099-MISC*, pages 10 and 11). On Form 1099-NEC, "Instructions for Recipient ... Box 1. Shows nonemployee compensation. If the amount in this box is SE income, report it on Schedule SE, as well as Schedules C or F (Form 1040) if a sole proprietor, or on Form 1065 and Schedule K-1 (Form 1065) if a partnership, and the recipient/partner completes Schedule SE (Form 1040)."
- Excess golden parachute payments are to be reported on Form 1099-MISC, Box 14 (*Instructions for Forms 1099-NEC and 1099-MISC*, page 7): On Form 1099-MISC, "Instructions for Recipient ... Box 14. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See your tax return instructions for where to report." The *2021 Instructions for Form 1040* refers to excess parachute payments in *Instructions for Schedule 2 Additional Taxes*, Line 17K, for the calculation of the excise tax.

Duplicate Reporting of Nonqualified Deferred Compensation

The following explains the duplicate reporting of compensation for a nonemployee in a nonqualified deferred compensation (NQDC) plan that does not meet the requirements of IRC § 409A:

- The value of an NQDC plan for a nonemployee in a plan that does not meet the requirements of IRC § 409A is reported in Box 15 on Form 1099-MISC (*Instructions for Forms 1099-NEC and 1099-MISC*, page 7).

- The *Instructions for Forms 1099-NEC and 1099-MISC* (pages 10 and 11) does not include guidance on whether the value of an NQDC plan that fails to meet § 409A requirements is also reported in Box 1 on Form 1099-NEC.
- Distributions from a nonemployee's NQDC plan, which meet the requirements of § 409A, are included in income based on IRC § 1.451-2, under the constructive receipt of income rules. The *Instructions for Forms 1099-R and 5498* (page 2) tell employers to report distributions to nonemployees on Form 1099-NEC.
- The combination of instructions for Forms 1099-NEC, 1099-MISC, and 1099-R appear to require employers to provide a nonemployee, who receives a distribution from an NQDC plan that fails § 409A, with a Form 1099-NEC and Form 1099-MISC reporting the same distribution information.

The APA recognizes that the reporting deadline for information on the Form 1099-NEC is different from that of the Form 1099-MISC. In addition, the Form 1099-NEC reflects amounts subject to self-employment tax that do not apply to amounts reported on Form 1099-MISC. However, eliminating duplicate reporting would reduce the possibility of inconsistent data reporting and be more efficient for payroll departments and their employers.

The APA would be pleased to discuss its recommendations further with the IRS. Please contact me at 202-669-4001 or ajacobsohn@americanpayroll.org.

Sincerely,



Alice P. Jacobsohn
Director, Government Relations

For: Government Relations Task Force Federal Issues Subcommittee
Chairs Rebecca Harshberger, CPP, and Jon Schausten, CPP