

AMERICAN PAYROLL ASSOCIATION

November 2, 2020

«FirstName» «LastName»

«Title»

«Agency»

«Street»

«City», «State» «Zip»

Re: State Use of IRS Form 1099-NEC for Nonemployee Compensation

Dear «Title» «LastName»:

The American Payroll Association (APA) asks to discuss state plans for filing and reporting nonemployee compensation in light of changed forms at the federal level. Effective for payments made after 2019, nonemployee compensation will no longer be reported on the Internal Revenue Service (IRS) Form 1099-MISC and, instead, will be reported on a new IRS Form 1099-NEC, *Nonemployee Compensation*. However, the IRS will not share with states the Form 1099-NEC returns filed with the IRS by organizations using the Combined Federal/State Filing (CF/SF) Program.

The IRS implemented Form 1099-NEC as a tool to implement the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), which changed the filing date for Forms 1099-MISC reporting nonemployee compensation to January 31 while retaining the filing due dates of February 28 (paper filing) and March 31 (electronic filing) for Forms 1099-MISC reporting amounts other than nonemployee compensation. Because of the confusion with multiple filing dates for one form, the IRS moved the reporting of nonemployee compensation for payments made after 2019 to Form 1099-NEC, which will have a filing date of January 31 for both paper and electronic filing. Beginning with the 2020 Form 1099-MISC, the filing dates are February 28 for paper filing and March 31 for electronic filing.

Explanation of Request

These IRS changes may affect state tax administration. A state that relies upon the combined CF/SF Program for compensation information returns may not receive the information unless the state requires all payor organizations to file Forms 1099-NEC directly with the state.

Many states have not announced changes as of late October 2020. At this point, it is likely too late to adopt a new direct filing program for 2020. Sufficient time is needed for developers of accounts payable management systems and payees reporting nonemployee compensation to accommodate any related state changes related to the shift of reporting of nonemployee compensation to Form 1099-NEC.

The APA has asked the IRS to add the Form 1099-NEC to the CF/SF Program. The APA asks that you consider making this same request of the IRS.

If the state is considering a direct filing requirement for 2021 returns (filed in early 2022), it is critical that organizations have guidance on these reporting requirements, both for paper and electronic filing. Key questions in which the APA would like answered regarding the 2021 reporting for Forms 1099-NEC and 1099-MISC include:

- If the state participates in the CF/SF Program, will it require separate electronic filing of Form 1099-NEC?
- Will the state require electronic and paper filing of the 2021 Form 1099-NEC?
- If electronic filing is required for Form 1099-NEC, is there a threshold for filing the form (e.g., 100 returns)? If so, what is the threshold?
- Will the state develop a separate form similar to Form 1099-NEC? If a state form is created, must organizations use the state form or will the state also accept the IRS Form 1099-NEC?
- If the state allows filing Forms 1099-MISC and 1099-NEC, will each form's filing date coincide with the IRS's filing dates? If not, what are the paper and electronic filing deadlines for each form?
- If the state requires electronic filing of Form 1099-NEC, will the state use the file format defined by the IRS in Publication 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*?

About APA

APA is a nonprofit association serving the interests of about 21,000 payroll professionals nationwide. APA's primary mission is to educate its members and the payroll industry about the best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. APA members are directly responsible for preparing and filing Forms 1099-MISC and 1099-NEC.

APA has long served an important role in our nation's tax collection system as a conduit between payroll and accounts payable departments, employers, and government authorities. APA's goal is to improve the efficiency of government tax collections and reporting through electronic payment and reporting programs and improved employer compliance.

Again, APA would like to discuss this issue with your office to provide meaningful feedback. Please inform us of your plans for the upcoming year and how we may be of assistance. You can reach APA through Alice Jacobsohn at ajacobsohn@americanpayroll.org or 202-669-4001. Thank you.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations
American Payroll Association

For: Cochairs APA Subcommittee on State and Local Topics
Pete Isberg
Carlanna Livingstone, CPP
Bruce Phipps, CPP

Resources:

- 2020 IRS Form 1099-NEC: <https://www.irs.gov/pub/irs-pdf/f1099nec.pdf>
- Instructions for Forms 1099-MISC and 1099-NEC: <https://www.irs.gov/pub/irs-pdf/i1099misc.pdf>
- 2020 Form 1099-MISC: <https://www.irs.gov/pub/irs-pdf/f1099misc.pdf>.
- IRS Publication 1220, *Specifications for Electronic Filing of Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G*: <https://www.irs.gov/pub/irs-pdf/p1220.pdf> (IRS Form 1099-NEC is included)