

IRS REGULATIONS AND GUIDELINES

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AGENDA

Accounts Payable Vs. Payroll

- Classification of Workers
- Expense/Travel Reimbursement
- 1099 Compliance
- Backup Withholdings
- Other Federal Regulations and Guidelines



ACCOUNTS PAYABLE VS. PAYROLL

ACCOUNTS PAYABLE VS. PAYROLL

Difference
between a 1099
& W-2

Who should
report payments
to the IRS

Employee vs.
Independent
contractor

Director's Fee's

Deceased Wages

Legal
Settlements

Determining
Taxability

WORKER MISCLASSIFICATION



INTERNAL REVENUE SERVICE VIEW

- Employee vs. Independent Contractor
 - Common Law Test (Form SS-8)
 - Behavioral Control
 - Financial Control
 - Type of Relationship
 - Reasonable Basis Test
 - Prior court decisions, IRS rulings, etc
 - Results of a prior IRS audit
 - A longstanding recognized practice in a specific industry

DEPARTMENT OF LABOR

FLSA-2024

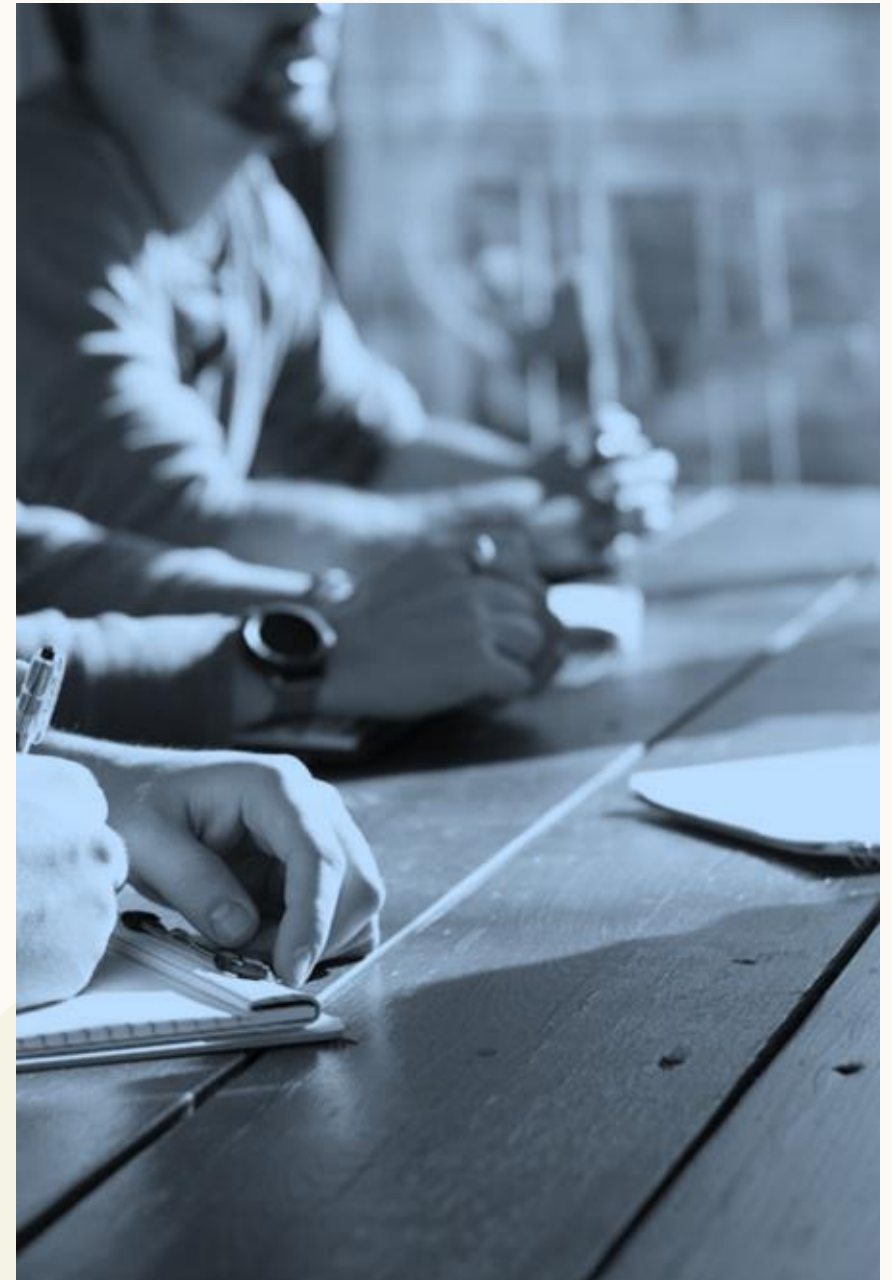
- As of 1/10/2024 89 F.R. 1638 issued a final ruling to provide further clarification on when a worker is an employee or independent contractor in the FLSA.
- Ruling that economic dependence is the ultimate inquiry. An individual being ultimately in “business for themselves”
- Could raise high non-compliance of non-exempt pay and overtime?
 - Make sure to evaluate your workforce

DEPARTMENT OF LABOR

FLSA-2024

- **Totality of Circumstances Six Factors**
 1. The opportunity for profit or loss depending on managerial skill
 2. Investments by the worker and the potential employer
 3. Degree of permanence of the work relationship
 4. Nature and degree of control
 5. Extent to which the work performed is an integral part of the potential employer's business
 6. Skill and initiative

EXPENSE/TRAVEL REIMBURSEMENTS



IRS EXPENSE REIMBURSEMENT REQUIREMENTS

- Type of expense and travel needs to be evaluated.
- Travel must be “away from home” and temporary.
- IRS defined-**away from home**
 - Away from home means the employee must be away overnight from their principal place of business.
- IRS defined-**temporary**
 - Temporary travel away from home the employee must be away from home for no more than one year.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS

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- How to handle any reimbursements or allowances provided to your employees under a reimbursement or allowance arrangement for travel, meals, and entertainment expenses are dependent on the type of plan your company administers.
- Under IRS guidelines there are 2 types of reimbursement plans
 - Accountable Plan
 - Non-Accountable Plan

IRS EXPENSE REIMBURSEMENT REQUIREMENTS-ACCOUNTABLE PLAN

- Accountable Plan-A plan that meets all the IRS requirements that allow reimbursements to be non-taxable.
- Requirements of an Accountable Plan
 - An accountable plan requires your employees to meet “all” of the following requirements.
 - Have paid or incurred deductible expenses while performing services as your employee,
 - Adequately account to you for these expenses within a reasonable period of time, and
 - Return any excess reimbursement or allowance within a reasonable period of time.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS- ACCOUNTABLE PLAN

- An accountable plan that the employer advances funds for the travel must meet the prior 3 requirements and the below:
 - The advance is reasonably calculated not to exceed the amount of anticipated expenses.
 - You make the advance within a reasonable period of time of your employee paying or incurring the expense

IRS EXPENSE REIMBURSEMENT REQUIREMENTS

- Your employees must adequately account to you for their travel, meals, and entertainment expenses.
- IRS defined- *Adequate accounting*
- They must give the employer documentary evidence of their travel, mileage, and other employee business expenses.
- The evidence should include items such as receipts, along with either a statement of expenses, an account book, a day-planner, or similar record in which the employee entered each expense at or near the time the expense was incurred.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS

- IRS defined- *Excess reimbursement or allowance*.
- An excess reimbursement or allowance is any amount you pay to an employee that is more than the business-related expenses for which the employee adequately accounted.
- The employee must return any excess reimbursement or other expense allowance to you within a reasonable period of time

IRS EXPENSE REIMBURSEMENT REQUIREMENTS

- ▶ IRS defined-*Reasonable period of time*.
- ▶ A reasonable period of time depends on the facts and circumstances. Generally, actions that take place within the times specified below will be treated as taking place within a reasonable period of time.
 - An advance is given within 30 days of the time the employee pays or incurs the expense.
 - Employees adequately account for their expenses within 60 days after the expenses were paid or incurred.
 - Your employees return any excess reimbursement within 120 days after the expenses were paid or incurred.
 - You give a periodic statement (at least quarterly) to your employee that asks them to either return or adequately account for outstanding advances and they comply within 120 days of the date of the statement.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS

- IRS defined-Non-Accountable Plan (Pub 535)
 - All amounts paid, or treated as paid, under a non accountable plan are reported as wages on Form W-2.
 - The payments are subject to income tax withholding, Social Security, Medicare, and federal unemployment taxes.
 - Employees can deduct the reimbursement as compensation or wages only to the extent it meets the deductibility tests for employees' pay.
 - Deduct the allowable amount as compensation or wages on the appropriate line of their income tax return, as provided in its instructions.

Table 11-1. Reporting Reimbursements

IF the type of reimbursement (or other expense allowance) arrangement is under	THEN the employer reports on Form W-2
An accountable plan with:	
<i>Actual expense reimbursement:</i> Adequate accounting made and excess returned	No amount.
<i>Actual expense reimbursement:</i> Adequate accounting and return of excess both required but excess not returned	The excess amount as wages in box 1.
<i>Per diem or mileage allowance up to the federal rate:</i> Adequate accounting made and excess returned	No amount.
<i>Per diem or mileage allowance up to the federal rate:</i> Adequate accounting and return of excess both required but excess not returned	The excess amount as wages in box 1. The amount up to the federal rate is reported only in box 12—it isn't reported in box 1.
<i>Per diem or mileage allowance exceeds the federal rate:</i> Adequate accounting made up to the federal rate only and excess not returned	The excess amount as wages in box 1. The amount up to the federal rate is reported only in box 12—it isn't reported in box 1.
A nonaccountable plan with:	
Either adequate accounting or return of excess, or both, not required by plan	The entire amount as wages in box 1.
No reimbursement plan	The entire amount as wages in box 1.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS-DAILY TRANSIT

- In 1999 the IRS ruled that reimbursements for daily transportation can be excluded from employee income if the following are met:
 - The expenses are for going between the employee's residence and a temporary work location outside the metro area where the employee lives and normally works.
 - The employee has one or more regular work locations away from the employee's residence and the expense is from going between the employee's residence and temporary work location in the same trade or business regardless of distance or
 - The employee's residence is his or her principal place of business and the expense is from going between the employee's residence and another work location in the same trade or business regardless of whether the other work location is regular or temporary and regardless of distance.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS-DAILY TRANSIT

- Temporary work location is the defined the same as the other expense rules previously reviewed.
- Daily qualified transit expenses include mileage and other incidental expenses such as parking, tolls etc.
- Issues arise for employees with break in employment or infrequent trips.
 - IRS ruled that short breaks of 2-3 weeks are not significant enough.
 - But a break of at least 7 months would be treated as a significant break.
 - 35 days for infrequent travel but reoccurring travel

IRS APPROVED WEB BASED REIMBURSEMENT PLANS

- The IRS in 2 private letter rulings has allowed for web-based reimbursement plans. In both cases employers allowed employees to:
 - Submit substantiation through paper or electronic means if the substantiation was provided in the allotted IRS time periods.
 - The employer allowed for all expenses on a company issued credit card with the employee submitting substantiation through an electronic expense report.

IRS APPROVED WEB BASED REIMBURSEMENT PLANS

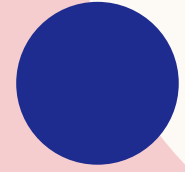
- The IRS did allow the expense reports to be substantiated if:
 - A description of each expense and it's business purpose and;
 - For each entertainment expense, the name and business relationship of the person being entertained, plus the date and duration of and participants in any business discussion that took place before or after the entertainment.
- The IRS also noted that all expenses reported over \$75 that where not noted on the expenses report or on the company credit card that paper receipts where required.

IRS EXPENSE REIMBURSEMENT REQUIREMENTS- TRANSPORTATION

- An employer may reimburse employees for local travel and/or transportation expenses while away from home through an allowance. The amount of the allowance can be no more than the federal standard mileage rate.
- 2023 Federal standard mileage rate as of 1/1/2023 is 65.5 cents per mile.
 - 22 cents per mile driven for medical or moving purposes.
 - 14 cents per mile driven in service of charitable organizations.
- 2024 Federal standard mileage rate as of 1/1/2024 is 67 cents per mile.
 - 21 cents per mile driven for medical or moving purposes
 - 14 cents per mile driven in service of charitable organizations.



1099 COMPLIANCE



1099-NEC

- Effective Tax year 2020 the IRS requires Form 1099-NEC to be used to report nonemployee compensation.
- The Form 1099-Nec must be provided to individual's and the IRS by Jan 31.
- The 1099-NEC resolves the differing reporting due dates for wages reported on the Form W-2 and the due date for the Form 1099-MISC
- Continue to use the 1099-MISC to report wages subject to federal income tax paid after the employee's death.
 - At least \$600 in:
 - 1. Services performed by someone who is not your employee (including parts and materials)
 - 2. Payments to an attorney
 - Reporting for anyone that back up withholding rules apply regardless of the amount
 - Director Fee's

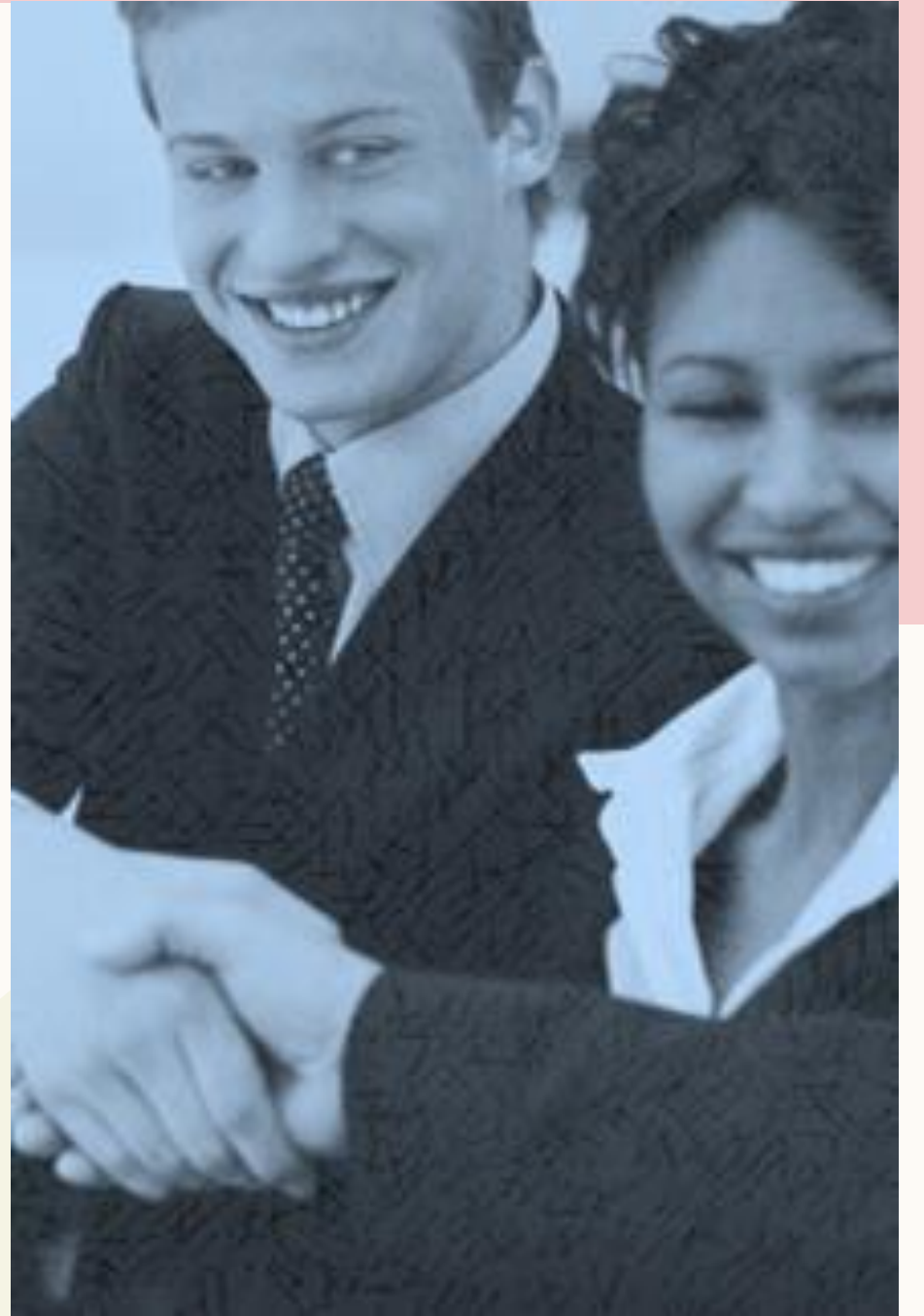
1099-MISC

- Used to report:
 - At least \$10 in royalties or broker payments in lieu of dividends or tax-exempt interest.
 - At least \$600 in:
 - 1. Rents
 - 2. Prizes and awards
 - 3. Other income payments
 - 4. Generally, the cash paid from a notional principal contract to an individual, partnership, or estate
 - 5. Any fishing boat proceeds
 - 6. Medical and health care payments
 - 7. Crop insurance proceeds
 - 8. Gross proceeds paid to an attorney
 - 9. Section 409A deferrals 10. Nonqualified deferred compensation

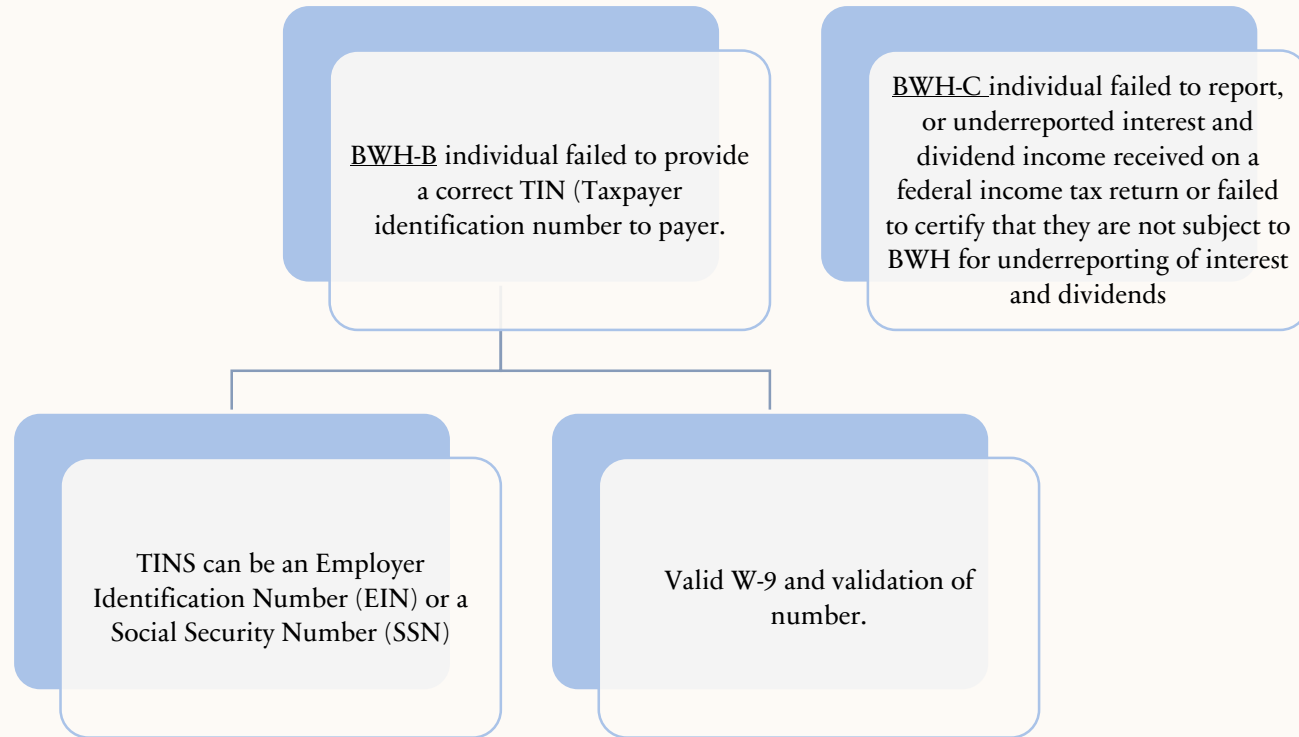
W-2 VERSUS 1099

- W-2's & 1099
 - Who should issue what
 - Why an employee should not receive both reporting forms
 - W-9 Form's
 - W-4 Form's

BACKUP WITHHOLDING



WHAT TRIGGERS BACK UP WITHHOLDING?



BACK UP WITHHOLDING

- Withhold at a flat 24% based on 2024 IRS rules
- Companies should complete back up withholding on:
 - Attorney's fees (Form 1099-NEC) and gross proceeds such as settlements paid to an attorney (Form 1099-MISC)
 - Interest payments (Form 1099-INT)
 - Dividends (Form 1099-DIV)
 - Rents, profits, or other gains (Form 1099-MISC)
 - Commissions, fees, or other payments for work you do as an independent contractor (Form 1099-NEC)
 - Payments by fishing boat operators, but only the part that is in money and that represents a share of the proceeds of the catch (Form 1099-MISC)
 - Royalty payments (Form 1099-MISC)
 - Others apply based on 1099 reporting



OTHER FEDERAL REGULATIONS/GUIDE LINES

DEATH PAYMENTS

- Death Payments
 - Who should the final wages be paid out to?
 - Beneficiary, Affidavit, Next of Kin per state law, Estate of
 - Date of Death
 - Wages paid in the year of death
 - Wages paid in the proceeding year of death
 - Who Reports what?

LEGAL SETTLEMENTS

- Legal Settlements
 - Back Pay Settlements
 - Punitive Damages
 - Emotion Distress Damages
 - Attorney Fees

SPOUSAL TRAVEL

- Spousal Travel
 - Business travel expense of a spouse or dependent is considered income and is taxable to the employee unless the below requirements are met:
 - The spouse or dependent is also an employee of the reimbursing employer.
 - The travel for the spouse and/or dependent is for a bona fide business purpose and
 - The expense would otherwise be deductible as a business expense by the spouse and/or dependent.

AIRLINE BENEFITS

- In 2002 the IRS announced that due to administrative burden they will not assert taxation on frequent flyer miles earned for business travel.
- This includes frequent flyer miles, or other airline benefits, such as penalty payments or free flights for employers who are denied seating for overbooked flights.
- This position does not apply to any benefits that can be converted into cash, or any compensation related benefit

QUESTIONS?

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