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Form 1099—Annual Information Returns – Penalties for *not* filing have doubled for 2011:

In the course of conducting trade or business activities, businesses often make payments to individuals for services rendered that are not wages reportable to the IRS on Form W-2. These payments, most often made to independent contractors, are normally reported to the IRS and the payee on Form 1099-MISC (Miscellaneous Income).

Penalty for Intentional Disregard to Filing Information Returns

When a filer fails to timely file or include correct information on an information return because of an intentional disregard of the rules, the penalty amount for each such failure increases. For information returns that are required to be filed after December 31, 2010, the penalty for intentional disregard is the **greater of \$250, or** in the case of the employment tax returns (i.e., Forms W-2, 1099-MISC, and 8027), **10% of the aggregate dollar amount of the items required to be reported correctly on the return.**

Example of Computation of the intentional disregard penalty.

In 2011, Corporation M deliberately excludes \$5,000 of compensation on a Form 1099-MISC issued to an independent contractor on which a total of \$200,000 (including the \$5,000) is required to be reported. The amount of the penalty is the greater of \$250, or 10% of the aggregate dollar amount of the items required to be reported but that were not reported correctly. Therefore, the amount of the penalty is \$500 ($\$5,000 \times 10\%$).

Form W-9 (Request for Taxpayer Identification Number and Certification)

A business payer uses **Form W-9 (Request for Taxpayer Identification Number and Certification**, form can be downloaded from the IRS.gov website) to request a U.S. person's (including a U.S. resident alien's) Taxpayer I.D. Number (TIN). **If a recipient does not provide a TIN**, the box on Form 1099 for providing the TIN to the IRS is left blank and **payments to the recipient are subject to backup withholding at a 28% rate.**

Payments Reportable as Nonemployee Compensation

Examples of payments that must be reported in box 7 as nonemployee compensation include:

1. Fees paid for professional services such as fees paid to attorneys (including corporations), accountants, architects, contractors, and engineers.
2. Fees paid by one professional to another, such as fee-splitting or referral fees.
3. Payments by attorneys to witnesses or experts in legal adjudication.
4. Payments for services, including payment for parts or materials used to render the services if supplying the parts or materials is incidental to providing the service. For example, the total payments to an auto repair shop for a repair contract showing separate amounts for labor and parts are reported if furnishing parts was incidental to repairing the auto.
5. Commissions to nonemployee salespersons that are subject to repayment but not repaid during the calendar year.
6. **A fee paid to a nonemployee, including an independent contractor**, or travel reimbursement that the nonemployee did not account to the payer, **if the fee and reimbursement total at least \$600.**
7. Exchanges of services between individuals in the course of their trades or businesses. For example, if an attorney represents a painter for nonpayment of business debts in exchange for the painting of the attorney's law offices, the amount reported by each on Form 1099-MISC is the FMV of his or her own services performed. However, if the attorney represents the painter in a divorce proceeding, the divorce is an activity that is unrelated to the painter's trade or business. Therefore, the attorney reports the FMV of his or her services on Form 1099-MISC, but the painter does not report the value of painting the law offices on Form 1099-MISC because the work is in exchange for legal services that are separate from the painter's business.
8. Payments of director's fees and other remuneration to members of the board of directors.
9. Payments to an insurance salesperson who is not a common law or statutory employee.

Payments to corporations (including S corporations) need not be reported unless the payments are for attorney's fees. Only payments made in the course of the payer's trade or business are reportable. Therefore, a payment by a sole proprietor to a doctor for medical services provided to the proprietor's child need not be reported.

Best Regards,

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