

# AGRICULTURAL TAX PLANNING

## Form 1099-MISC Requirements and New Penalties

By Thomas J. Bryant, CPA and Ryan Beasley, CPA

The holidays are once again upon us which means the 2015 tax filing season is just around the corner. One of the first filings many of us must deal with is information reporting. Some ranchers and farmers have full or part-time employees and are required to prepare, distribute and file Forms W-2. However, most of us, both large and small operations, also pay independent contractors and make other payments during the year which may require the issuance and filing of a Form 1099-MISC. In this article we will review the basic requirements of Form 1099-MISC reporting and the penalties for non-compliance. There are a number Form 1099's and other forms that must be issued for many types of payments, but we will focus our review on Form 1099-MISC.

Before addressing Form 1099-MISC, we should mention the importance of Form W-9, Request for Taxpayer Identification Number. This form provides the payee information businesses will need to complete Forms 1099-MISC. To avoid a year-end rush to obtain the W-9 Forms, a good idea is to require each independent contractor or others to whom you will be making payments that require Form 1099-MISC reporting to complete a W-9 Form before you make your first payment.

### **Form 1099-MISC Reporting Requirements**

Business owners in general are required to issue a Form 1099-MISC to unincorporated parties to whom they paid \$600 or more in "Miscellaneous Income" in a calendar year. These payments include but are not limited to:

- Payments to independent contractors such as day laborers, cowboys and others;
- Prizes and awards that are not for services performed;
- Rents, including real estate rentals, machine and equipment rentals, and pasture rentals. Rents paid to a real estate agent are not reportable by the payer;
- Royalties of \$10 or more;
- Payments to physicians including health care services provided by corporations, including professional corporations or other suppliers of health or medical services. **Also includes business payments to unincorporated and incorporated veterinarians;**
- Crop insurance payments;
- Fish purchases paid in cash for resale;
- Fees and gross proceeds paid to attorneys, including those paid to corporations providing legal services; and
- Income from nonqualified deferred compensation plans regardless of the amount.

Payments to corporations including LLC's treated as C or S Corporations **do not** have to be reported on Form 1099-MISC unless specifically required as stated above. Payments for merchandise, telephone, freight, storage, and similar items such as purchases of feed, cattle, hay, seed and other ranch or farm supplies **are not reportable**.

The **due date** for issuing most of the information returns to the **payee (recipient)** is **January 31** of the following year. However, information returns reporting gross proceeds to attorneys and some other payments are due February 15 of the following year. If you are issuing less than 250 forms on paper (most small and medium ranchers and farmers), the **due date for filing the forms with the IRS is February 28 (February 29 for 2016)** of the following year. If these dates fall on a Saturday, Sunday or legal holiday the filings or statements are due on the next business day. Large businesses filing 250 or more forms must report electronically to the IRS and that due date is March 31. Businesses filing less than 250 forms may elect to file electronically.

You may request an automatic 30-day extension of time to file by completing Form 8809, Application for Extension of Time to File Information Returns. You may also request an additional 30-day extension of time to file but the additional request is not automatic. **Caution** – The automatic extension of time to file and any approved additional 30 day extension applies only to the copy filed with the IRS. It **does not extend** the due date for furnishing statements to **recipients of which is January 31.**

#### **Penalties for Non-Compliance**

The newly increased penalties for non-compliance with the information return rules are **severe**. There are two sets of penalties regarding information returns; Failure to File Correct Information Returns by the Due Date (Section 6721) and Failure to Furnish Correct Payee Statements (Section 6722). Failure to comply with the requirements of either of the sections without reasonable cause may subject you to a penalty.

#### **Failure to File Correct Information Returns by the Due Date (Section 6721)**

- Failure to file timely;
- Failure to include all information required to be shown on the return;
- Including incorrect information on the return;
- Filing on paper when required to file electronically;
- Filing paper returns that are not machine readable;
- Reporting an incorrect Taxpayer Identification Number (TIN), and
- Failure to report a TIN.

The amount of the penalty is based on when you file the correct return. The penalty is:

- \$30 per each form if you correctly file within 30 days (by March 30 if the due date is February 28); the maximum penalty under this situation is \$250,000 per year (\$75,000 for small businesses);
- \$60 per each form if you correctly file more than 30 days after the due date, but file by August 1; the maximum penalty in this situation is \$500,000 per year (\$200,000 for small businesses), and
- \$100 per each form if you file after August 1 or you do not file the required information returns; the maximum penalty in this case is \$1,500,000 per year (\$500,000 for small businesses).

For this purpose you are a small business if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are \$5 million or less.

#### **Exceptions to this Penalty**

1. The penalty will not apply to any failure that you can show was due to reasonable cause and not willful neglect. Generally, you must show you acted in

a responsible manner, took steps to avoid the failure and the failure was due to significant mitigating factors or an event beyond your control.

2. An inconsequential error or omission is not considered a failure to include correct information. Basically, this is an error or omission that does not hinder or prevent the processing of the return or its intended use. Errors related to a TIN, a payee's surname, and any money amounts are **never** considered inconsequential.
3. De minimis rule for corrections. The penalty for failure to file correct information returns will not apply to a certain number of returns even if you cannot show reasonable cause if you:
  - a. Filed the returns timely;
  - b. Either failed to include all the information required on a return or included incorrect information, and
  - c. Filed corrections by August 1.

If all of the conditions above (a, b, and c) are met, the penalty will not apply to the greater of 10 information returns or ½ of 1% of the total number of information returns you are required to file for the calendar year.

#### Failure to Furnish Correct Payee Statements (Section 6722)

Failure to provide correct payee statements by the due dates, failure to include all information required to be shown on the statement, or you include incorrect information and you cannot show reasonable cause may subject you to a penalty. This is a **separate penalty** and is applied in the same manner as the penalty for failure to file correct information returns by the due date, Section 6721 described above.

#### Exception to the Penalty

As with the Section 6721 penalty, inconsequential errors are not considered a failure to include correct information. An inconsequential error is one that cannot reasonably be expected to hinder the payee from timely receiving and reporting correct information on his or her income tax return or otherwise putting the statement to its intended use. Errors relating to dollar amounts, a significant item in a payee's address, not providing the appropriate form, and not providing the return timely are never inconsequential errors.

#### Penalty for Intentional Disregard of the Requirements

If any failure to file a correct information return is due to **intentional disregard** of the filing or correct information requirements, **the penalty is at least \$250 per each form with no maximum penalty** (Section 6721).

If any failure to provide a correct payee statement is due to **intentional disregard** of the requirements to furnish a correct payee statement, **the penalty is at least \$250 per each form with no maximum penalty** (Section 6722).

#### Forms

Paper forms may be obtained from the IRS and are also available commercially. A transmittal form (Form 1096) must be filed along with the 1099 Forms filed with the IRS.

#### Summary

We have mainly discussed Form 1099-MISC in this article, but the penalties explained above generally apply to most information returns. Compliance may be time consuming but as mentioned above, the penalty for non-compliance is severe. If in doubt as to whether or not an information return is required, issue the information return and avoid a possible penalty. This article covered only the general basics of compliance with the information return rules with a focus on Form 1099-MISC. There are many specifics that

apply to only certain returns and you should contact your tax professional or our firm if you need more information or assistance. This article is a summary of tax law and Department of Treasury regulations as of November 2015 and is not meant to be an opinion or interpretation of any federal laws or regulations.

MERRY CHRISTMAS AND HAPPY NEW YEAR TO ALL OF OUR READERS.

For information on this topic or other tax planning for ranching and farming, please contact me at (863) 640-2008 or [tom@beasleybryantcpa.com](mailto:tom@beasleybryantcpa.com) and/or Ryan Beasley at (863) 646-1373 or [ryan@beasleybryantcpa.com](mailto:ryan@beasleybryantcpa.com).

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