



**TAX EXEMPT AND GOVERNMENT
ENTITIES PRESENTS**

**FEDERAL, STATE AND LOCAL
GOVERNMENTS/ EMPLOYMENT
TAXES**



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FSLG Mission:

- To provide government entities with top quality service
 - by helping them understand and comply with applicable tax laws, and
 - to protect the public interest by applying the tax laws with integrity and fairness to all
-



Topics:

- WORKER CLASSIFICATION
 - IRS FILING REQUIREMENTS:
 - Form 1099
 - CP2100/ "B" Notices
-



A Note Before We Begin...

- This presentation is designed to provide information – not a specific determination for your situation
- Worker classification determinations are made on a case by case basis, depending on the specific facts and circumstances

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5



Worker Classification

- Workers may be:
- Independent Contractors
- Employees
- How do you know

Resources

- [Pub 1779](#)
- www.irs.gov



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6



Independent Contractor

- Generally, an independent contractor is an individual who performs services for an entity where the entity controls only the result of the work.

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7



Employee

- Considerations:
- Common Law Rules
- Specific Federal Tax Statutes
- Section 218 Agreement

Resources:

- [Pub 963](#)
- www.ncsssa.org/statessadminmenu.html

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8



Public Officials

- Mayor
 - Legislator or elected representative
 - County commissioner
 - Judge/justice of the peace
 - County or city attorney, marshal, sheriff, constable
 - Registrar of deeds
 - Tax collector or assessor
 - Road commissioner
 - Board members
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9



Common Law Employee

- An employer-employee relationship exists when the person for whom services are performed has the right to:
 - control and direct the individual who performs the services
 - not only as to the result, but also as to the details and means
 - Treas. Reg. 31.3121(d)-1(c)(1)
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10



Employee vs. Independent Contractor

- Categories of Evidence:
 - Behavioral control
 - Financial control
 - Relationship of the parties



Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation system
- Training provided by the business



Behavioral Control

- Key fact to consider is whether the entity retains the RIGHT to control the worker regardless of whether the entity actually exercises that right.



Financial Control

- Significant investment?
- Unreimbursed expenses?
- Opportunity for profit or loss?
- Services available to the market?
- Method of payment?



Relationship of the Parties

- Is there a written contract?
- Are employee-type benefits provided?
- Permanency of the relationship?
- Are services provided a key activity of the business?

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15



What if I'm Still Not Sure?

File Form SS-8
with IRS

Resource:

- [Form SS-8](#)

Form SS-8 (Rev. May 2014)		Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding		OMB No. 1545-0048 For IRS Use Only: Case Number: Earliest Receipt Date:
Department of the Treasury Internal Revenue Service		Information about Form SS-8 and its associated instructions is at www.irs.gov/formss8		
Name of firm (or person) for whom the worker performed services		Worker's name		
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address	
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number	
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)	
Note: If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer.				
Disclosure of Information				
The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See <i>Privacy Act and Paperwork Reduction Act Notice</i> in the separate instructions for more information. If you do not want this information disclosed to other parties, do not file Form SS-8.				
Part 1-4. All items of Form SS-8 must complete all questions in Parts 1-4. Part 1 must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.				
Part I General Information				
1 This form is being completed by: <input type="checkbox"/> Firm <input type="checkbox"/> Worker, for services performed _____ (beginning date) to _____ (ending date)				
2 Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). _____				
3 Total number of workers who performed or are performing the same or similar services: _____				
4 How did the worker obtain the job? <input type="checkbox"/> Application <input type="checkbox"/> Bid <input type="checkbox"/> Employment Agency <input type="checkbox"/> Other (specify) _____				
5 Attach copies of all supporting documentation (for example, contracts, invoices, receipts, Form W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year of issue: \$ _____ If both Form W-2 and Form 1099-MISC were issued or received, explain why: _____				
6 Describe the firm's business: _____				
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 151067 Form SS-8 (Rev. 5-2014)				

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16



Form 8919

- Misclassified workers report their share of Social Security and Medicare on Form 8919 (only if certain conditions are met)

Resource:
[• Pub 8919](#)

8919 Uncollected Social Security and Medicare Tax on Wages

Department of the Treasury Internal Revenue Service

OMB No. 1545-0045

Form 8919 2015

Information about Form 8919 and its instructions is at www.irs.gov/form8919.

Name of person who must file this form: If married, complete a separate Form 8919 for each spouse who must file this form. Social security number

Who must file. You must file Form 8919 if all of the following apply.

- You performed services for a firm.
- You believe your wage from the firm was not for services as an independent contractor.
- The firm did not withhold your share of social security and Medicare taxes from your pay.
- One of the reasons listed below under "Reason codes" applies to you.

Reason codes. For each firm listed below, enter in column (c) the applicable reason code for filing this form. If more than one reason code applies to you, list you before you should have been treated as an employee, enter reason code (c), and file Form SS-8 on or before the date you file your tax return.

A. I filed Form SS-8 and received a determination letter stating that I am an employee of the firm.

C. I received other correspondence from the IRS that states I am an employee.

G. I filed Form SS-8 with the IRS and have not received a reply.

H. I received a Form W-2 and a Form 1099-MISC from the firm for 2015. The amount on Form 1099-MISC should have been included on wages on Form SS-8. Do not file Form SS-8 if you selected reason code (H).

(a) Name of firm	(b) Firm's EIN (or other identification number (see instructions))	(c) Reason code (see instructions)	(d) Enter amount of uncollected social security and Medicare tax (see instructions)	(e) Enter amount of uncollected social security and Medicare tax (see instructions)	(f) Enter amount of uncollected social security and Medicare tax (see instructions)	(g) Total wages received by you from this firm for 2015 (do not include amounts reported on Form W-2)
1						
2						
3						
4						
5						
6 Total wages. Combine lines 1 through 5 in column (g). Enter here and include on Form 1040, line 7 (Form 1040-EZ, line 8, or Form 1040-ES, line 2).						6
7 Maximum amount of wages subject to social security tax.						7 118,500
8 Total social security wages and social security tax (total of lines 7 and 7 on Form(s) W-2, railroad retirement (RRBTA) compensation (subject to the 5.2% rate), and unreported tips subject to social security tax from Form 4157. See instructions.)						8
9 Subtract line 8 from line 7. If line 8 is more than line 7, enter 0. See instructions.						9
10 Wages subject to social security tax. Enter the smaller of line 6 or line 9.						10
11 Multiply line 10 by 6.2% (social security tax rate).						11
12 Multiply line 10 by 1.45% (Medicare tax rate).						12
13 Add lines 11 and 12. Enter here and on Form 1040, line 16d (Form 1040-EZ, line 16c, or Form 1040-ES, line 16). See instructions.						13

For Paperwork Reduction Act Notice, see your tax return instructions. (Use by 07/08) Form 8919 2015



SS-8 Receipt Process

- Form SS-8 is reviewed
- If incomplete, the Form SS-8 is returned with an explanation or a request for additional information
- Most common reason for return

 **IRS** Form SS-8 Determinations

- Determination letters are binding on the IRS based on the facts presented
- May be modified or revoked for various reasons
- Not considered an audit or examination, but may lead to one if the taxpayer takes a position contrary to the determination

 **IRS** Independent Contractor

- Forms and Filing Requirements:
- Secure Form W-9 before paying the vendor
- File Forms 1099-MISC and 1096
- File Form 945 for Backup Withholding



FIRE System

- Filing Information Returns Electronically
- The system is available 24 hours a day, 7 days a week.

- Those required to file 250 or more information returns for any calendar year, must file electronically.

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21



Employee

- Forms and Filing Requirements
- Secure Form I-9
- Secure Form W-4 before paying employees
- File Forms W-2 and W-3

Resources:

- www.irs.gov/Individuals/IRS-Withholding-Calculator
- www.ssa.gov/employer/

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22



Employee

- Form 941, Employer's Quarterly Federal Tax Return
- Form 944, Employer's Annual Federal Tax Return

Resource:

- www.eftps.gov/eftps - Electronic Federal Tax Payment System



Wages

- The term “wages” means:
 - all compensation for employment unless the law grants a specific exception
- Wages may be paid in cash, or in other form
- Noncash wages are measured by their fair market value



Penalties

- Information Returns
 - Failure to furnish correct payee statements
 - Failure to file correct information returns
 - Employment Tax Returns
 - Failure to file
 - Failure to pay
 - Failure to deposit
-

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25



Example: Elected Officials

- Mayor and Council Members are paid \$100/month. How should their earnings be reported?

Explain...

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26



Example: Elected Officials

- Mayor and Council Members are paid \$100/month. How should their earnings be reported?
 - Elected officials are specifically identified as employees under tax law
 - \$1,200 reported as wages on Form W-2 for mayor and council members
 - FICA and income tax withholding, as applicable, are reported
-

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27



Voluntary Classification Settlement Program (VCSP)

- Agree to reclassify as employees for future periods
 - Partial relief from past employment taxes
 - The application and process are simple
 - Entities pay just 10% of tax computed on favorable rates
 - No penalties or interest
 - Audit protection for past years on workers being reclassified
-

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28



Voluntary Classification Settlement Program (VCSP)

- Complete Form 8952, Application for Voluntary Classification Settlement Program
- File 60 days prior to treating workers as employees
- IRS will review application and prepare a closing agreement (if applicable)

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29



Voluntary Classification Settlement Program (VCSP)

- Eligible Entities
- Must be currently treating workers as nonemployees
- Must have filed 1099s for nonemployees
- Cannot be under employment tax audit
- Can be tax-exempt organizations or government entities

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30



Voluntary Classification Settlement Program (VCSP)

Resources:

- [VCSP Website](#)
- [Announcement 2012-45](#)



Due Dates

New Filing Due Date : January 31, 2017

Forms W-2/W-3 to SSA

Forms 1099-MISC, Box 7 to IRS



Most Common Forms 1099s

Form 1099-MISC (Miscellaneous Income)

Form 1099-INT (Interest)

Form 1099-G (Certain Government
Payments)

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33



Forms 1099 (-G,-INT,-MISC)

- Generally Exempt Payees
 - Governmental entities
 - Indian tribes
 - Corporations*

(* Includes LLC designated as a corporation)

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34

 **IRS** Form 1099-MISC Special Rules

- Include Payments paid to Legal and Medical Corporations
 - Payments to medical and health care service-providers (Box 6)
 - Payments to legal firms for legal services (Box 7 or Box 14)

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35

 **IRS** Form 1099-MISC General Exemptions

- Payments for merchandise and inventory
 - Examples:
 - Office Supplies
 - Cleaning Supplies
- Payments of rent to real estate agents acting as an agent for the owner

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36



Common Questions

- How long do I keep copies of information returns?
 - Three years from the filing date, unless backup withholding applies (4 years).
- What if I cannot obtain a taxpayer identification number, or the Form W-9 information, from the recipient?
 - Backup withholding applies

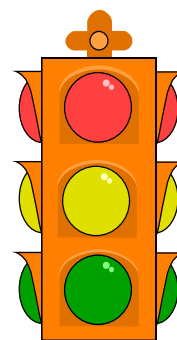
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37



Are you required to do Backup Withholding?

- If you make reportable payments to “persons” who have not furnished their valid TIN, the withholding rate is 24%; and
 - the backup withholding applies to any payments reported on Forms 1099-G, 1099-INT, and 1099-MISC



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38

When to begin Backup Withholding

- If the payer has requested & the payee has refused to provide a valid TIN
- If directed to do so by the IRS “Lock-in Letters”
- If the payee is present on the Bad/Missing/No TIN (CP2100/2100A) Notice for 2 of 3 prior years



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39

When to begin Backup Withholding

- The payer is required to secure reporting information for Forms 1099-MISC from the vendors
- The obligation to initiate backup withholding commences when the vendors are asked for their TINs
- **NOTE:** it is the failure to secure a TIN that subjects the payee and payer to backup withholding

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40



Backup Withholding – Form W-9

- Form W-9 is not required (but recommended) when a vendor is initially asked for a TIN
- Form W-9 is required when the vendor has been identified by the IRS as a provider of erroneous information reported on Forms 1099 (CP 2100/2100A Notices)

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41



When to begin Backup Withholding

- CP 2100/2100A Notices
- Sent to the payers when erroneous information is identified on filed F1099
- Direct the payer to take an action dependent upon various factors

Payer must identify all vendors who have provided erroneous information in 2 out of 3 years of reporting and initiate mandatory backup withholding.

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42

 **CP 2100/2100A Notices**

B-Notices

- 1st B-Notice: 15 business days from CP2100 Notice date or date received
- 2nd B-Notice:
 - a. SSN problem: SSN card
 - b. EIN problem: 147C letter
- Publication 1281

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43

 **How to report Backup Withholding**

- Report withholding amounts to payee and to IRS in Box 4 of Form 1099-MISC
- Form 945 is used to report and pay backup withholding to the IRS
 - This is an annual return, due 1/31/xx
 - ordinary deposit rules apply
 - make Form 945 deposits separate from Form 941 deposits

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44



Verifying TIN*s

- You may verify any Taxpayer Identification Number (TIN) by registering with the IRS's TIN Matching Program



- Use of the TIN Matching program will reduce the number of TIN/Name mismatches and protect the employer from civil penalties
- Failure to register and/or use program will not be used to impose civil penalties on non-users

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45



Verifying TINs

- The TIN Matching Program contains:
 - Social Security Numbers (SSNs)
 - Individual Taxpayer Identification number (ITINs) and
 - Employer Identification Numbers (EINs) issued by SSA and IRS
- Register with IRS e-services at www.irs.gov/taxpros



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46



Resources

Martinsburg Computing Center Information Return Program (MCCIRP)

- Questions 1-866-455-7438
(8:30 - 4:30 PM EST.)
- E-mail Inquiries
www.mccirp@irs.gov

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47



Resources

IRS Forms and Publications

- <http://publish.no.irs.gov/catlg.html>
- Forms 1-800-829-3676
- General Instructions for Certain Information Returns (Catalog #27976F)
- Instructions for Forms 1099-MISC (Catalog #11409F)

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48



Resources

- Tax-Exempt/Government Entities Customer Account Services
 - 877-829-5500

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49



Resources

- www.irs.gov
 - Type keywords “worker classification” in search box
- [Pub 15-A PDF](#) – Employer’s Supplemental Tax Guide
- www.irsvideos.gov/Governments/Employers
- Submit comments: TEGE.Outreach@irs.gov

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50