

## ABOUT IRS FORM 1099-MISC

Federal law requires you to determine if a vendor or payee must receive a 1099 information return. You must determine if a payee is a Sole Proprietorship or Partnership. You determine this by obtaining a Form W-9 from all those you pay money to.

**Obtain a W-9 for ALL vendors that are an individual or LLC and you pay rent, labor, & services including parts and materials.**

Ideally, the time to obtain the W-9 is BEFORE you write the first check to a vendor. If they refuse to complete a W-9, you must withhold 28% from any future payments until they do so.

To insure that the W9s are completed correctly, we recommend that you use a letter type form instead of the IRS form W9. The IRS provided form tends to be confusing for some people. A downloadable sample letter is available on our web site [www.asbinc.net](http://www.asbinc.net)

### **A Form W-9 will document...**

The proper, **legal** taxpayer name, ID # and address for the 1099.

Exemptions: Only C-Corps, S-Corps and LLCs filing as corporations

Don't "assume" that companies that you do business with are incorporated!

Limited Liability Companies (LLC) who are not corps, Sole Proprietors and

Partnerships must get 1099s.

All attorneys get 1099s, if over \$600

**\*\*WARNING\*\*** The IRS can issue penalties for mismatched names and ID #s, so...

### **Get those names straight:**

1099's must show the individual's legal tax name.

The second line is the "d/b/a." If you only use the company name, and that is not the way the ID number is listed with the IRS, you will be sent a notice stating that the ID number does not match their computer. This is true even if they are using a Federal ID number and not their SS#.

Watch for potential penalties in the future. This is a hot area with the IRS.

### **Please be careful when determining if a payee is self-employed or an employee.**

If you treat someone as self-employed, be prepared to defend your position.

If you issue 1099s and the payees consider themselves not self-employed, they may not be willing to pay self-employment taxes. They may file a SS-8 Determination form with the IRS.

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. Please read the article entitled "Should that vendor get a 1099 or W2?" on our web site at [www.asbinc.net](http://www.asbinc.net)

### **There are three main categories that the IRS will consider.**

#### 1. BEHAVIORAL CONTROL

Instructions. How, When & Where work is done. Whose tools? Can they bring assistants?

#### 2. FINANCIAL CONTROL

Whether there is a right to direct or control the business part of the work.

Do they have an opportunity for profit or loss? Are they really self employed?

#### 3. RELATIONSHIP OF THE PARTIES

Are there any employee benefits? Is there a contract? Invoices or timesheets?