

# FREQUENTLY ASKED QUESTIONS

## Contents

Doesn't "LLC" mean the vendor is a corporation? .....	2
Why does a vendor need a W-9 on file when their payments are not reportable on a 1099-MISC? .....	2
Please explain the different withholding classes.....	2
Which payments are considered rent or leasing? .....	2
Which vendor payments fall under the category of "utilities"? .....	3
Are travel reimbursements for speakers and consultants 1099-reportable? .....	3
Motels: which payments are reportable?.....	4
Restaurant meals vs. catering – which get reported? .....	4
Aren't Higher Ed employees state employees too? .....	4
Payments to employees outside of payroll – I'm confused.....	4
Are legislators considered state employees? .....	4
What if a bill for repairs contains both parts and labor, and the invoice does not split out the two amounts? .....	5
Can agencies use a P-card for payment of services? .....	5

## **Doesn't "LLC" mean the vendor is a corporation?**

No, actually "LLC" means Limited Liability Company. That is a legal title, but it does not define the tax filing status for IRS purposes. If one carefully reads the instructions on a W-9 form (<http://www.irs.gov/pub/irs-pdf/fw9.pdf?portlet=3>), one would see on page 2 the following language:

Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

In other words, an LLC can still be a sole proprietorship, partnership, or a corporation. Until Vendor Registry receives paper documentation from a company that they are a limited liability corporation, this office will assume that the vendor is not incorporated, and withholding will be turned on that vendor.

## **Why does a vendor need a W-9 on file when their payments are not reportable on a 1099-MISC?**

Forms W-9 are needed regardless of whether or not their payments get reported on a 1099 form. The State of North Dakota is required by the Internal Revenue Service to have certain vendor/payee information on file. When the vendors complete a W-9 or Vendor Registry Substitute W-9, they are also stating their organization type, address and the correct name that corresponds to the taxpayer identification number given.

## **Please explain the different withholding classes.**

See the detailed information provided by Vendor Registry at:  
<http://www.nd.gov/vr/1099/docs/explanation-of-diff-classes.doc>

Or use these handy references:

<http://www.nd.gov/vr/1099/docs/1099-irs-handout.xls>  
<http://www.nd.gov/vr/1099/docs/irs-versus-bus-type.rtf>

## **Which payments are considered rent or leasing?**

Agencies are the best judges of what they pay rent or leases for. Some examples are:

Office space rent

- Motel rooms
- Equipment leases
- Office equipment such as copiers
- Land rent

All rent or lease payments are reportable on a 1099 under withholding class 01, unless they are paid to a corporation. If a blue withholding link shows up in a voucher, you can assume that Vendor Registry has determined that this vendor is not a corporation. If you disagree, please feel free to contact them. Vendor Registry may not have received paperwork from that company to make the correct determination of reporting.

## Which vendor payments fall under the category of “utilities”?

Utilities are not 1099-reportable payments, including monthly bills for cell phones and Internet service. You may use the following website for reference: <http://www.irs.gov/pub/irs-irbs/irb04-31.pdf>. Even though this IRS document concerns merchant codes for reporting on procurement cards, it can be used as a guideline for voucher reporting also. The listing for utilities can be found on page 25 of this document. Utilities include, but are not limited to, the following:

- Heat
- Electricity
- Water
- Garbage (monthly service, not periodic trash pickups)
- Cable, satellite, and other hookups (not advertising or other services)
- Telephone and cell phone service
- Internet access

## Are travel reimbursements for speakers and consultants 1099-reportable?

State agencies can use the following items for consideration in making this determination:

### General IRS Rules for Independent Contractors

[http://www.irs.gov/pub/irs-tege/fringe\\_benefit\\_fslq.pdf](http://www.irs.gov/pub/irs-tege/fringe_benefit_fslq.pdf)

### **Reimbursements for Travel, Transportation and Other Out of Pocket Expenses**

- IF SUBSTANTIATED, do not report on Form 1099 MISC and is not taxable to the payee. *Reg. §1.274-5T(h)*
- IF NOT SUBSTANTIATED, report on Form 1099-MISC with other compensation. Taxable to payee but no withholding is required. *Reg. §1.274-5T(h); Reg. §1.274-5T(h)(2); IRC §132 (d)*.
- *Publication 463* provides information regarding accounting for independent contractors (vendors) regarding records, substantiation and reporting requirements.
- In general, all compensation for services for an independent contractor are to be reported on Form 1099-MISC when the amount is \$600 or more in a calendar year. The amounts are not subject to income or employment tax withholding [on a W-2].

- If the individual is considered an independent contractor and does not properly account to you for reimbursed expenses, then any advances or reimbursements are to be included on a Form 1099-MISC along with the compensation for their services. *Reg. §1.274-5T(h)(2)*

Some government guidelines state that travel reimbursements suggest an employer-employee relationship and not an independent contractor status. See point #20 on the ND Department of Labor's web page at: <http://www.nd.gov/labor/contractor/index.html>.

Hopefully this information will help agencies make the right decision, rather than add more confusion. Ultimately it comes down to the agency being able to defend their position in case of an audit by the State Auditor's Office or IRS.

## **Motels: which payments are reportable?**

Payments to motels for sleeping rooms, meeting rooms, and catering are reportable unless the motel is owned by a corporation. If the blue withholding link shows up in the voucher, it means that Vendor Registry has determined that the vendor is reportable. The agency then needs to decide if the payment is also reportable.

## **Restaurant meals vs. catering – which get reported?**

Payments to restaurants can be reported on a 1099 – or not. Payments to restaurants or businesses like the Great Capital Lunchroom for meals or food items only are not reported. But if you are paying that vendor for catering, that is a service that is reportable. Did the vendor merely provide the pop, coffee, and cookies, or did they serve a meal or buffet? The answer will determine whether or not the payment is reportable.

## **Aren't Higher Ed employees state employees too?**

For every other topic, Higher Ed employees are considered state employees. Only for usage in PeopleSoft Financials and Payroll are they considered "non-employees" by state agencies. See <http://www.nd.gov/vr/1099/docs/non-state-employees.pdf>.

## **Payments to employees outside of payroll – I'm confused**

You are confused because it is a complicated subject! Please see the following website for more details: <http://www.nd.gov/vr/services/docs/employees-vs-ind-contractor.doc>.

## **Are legislators considered state employees?**

Yes, they are. All state legislators have employee ID's on Payroll and are set up with employee vendors in Accounts Payable. All policies that concern paying state employees also apply to legislators:

- Employee versus Independent Contractor considerations
- Travel Reimbursements
- Payments made on the employee vendor and not a regular vendor number

If your agency needs to pay or reimburse a state legislator and need the EMPL ID, please contact the Legislative Council at 328-2919 or the Vendor Registry office.

## **What if a bill for repairs contains both parts and labor, and the invoice does not split out the two amounts?**

From: <http://www.irs.gov/pub/irs-pdf/i1099msc.pdf>

Payment for services, including payment for parts or materials used to perform the services if supplying the parts or materials was incidental to providing the service. For example, report the total insurance company payments to an auto repair shop under a repair contract showing an amount for labor and another amount for parts, if furnishing parts was incidental to repairing the auto.

From: <http://www.irs.gov/irm/part4/ch06s06.html>

Payments for services, including payment for parts or materials used to perform the services, are reportable in total on Form 1099-MISC. This applies if supplying the parts or materials was incidental to providing the service. See Rev. Rul. 81-232 and Reg. 1.6041A-1(a)(2). Example: ABC Company paid XYZ Plumbing to repair a leaky faucet in their office space. The plumbing company charged \$650 for the repair, which included parts and materials. The entire amount is included in Box 7. (Note: If XYZ is a sole proprietor, then the owner's name would be entered as the recipient on Form 1099-MISC instead of XYZ Plumbing.)

In the above paragraphs, "incidental" means if the parts are necessary to make the repairs, the whole bill is reportable on a 1099. Parts purchased as supplies on hand would not be reported.

## **Can agencies use a P-card for payment of services?**

As of January 1, 2011, agencies can use a P-card for 1099 reportable purchases.