



Liberty Tree

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Who is required to do what?

An updated refresher on the “information” reporting regime of the Internal Revenue Code and the IRS

Part I: The W-9 Form.

In order for Patriots to effectively counteract IRS misrepresentations and public misunderstandings about the law in their personal life, they must of course have a reasonable, if not solid and incontrovertible, basis for their actions. Such reasons often come from reading the law and regulations for ourselves, and applying them as written.

Unfortunately, although there are signs of people waking up to various aspects of the governmental tyranny we are living under in America, we still live in an extremely dumbed-down society, where most business people are not taught or encouraged to seek out the written law. Decades of omission of the subject of law from the public schools, and teaching children to read using torturous methods (instead of phonics) has rendered even the experience of researching and reading unpleasant and difficult for many. Reading the law for comprehension is beyond the capabilities of many citizens today; many lack even the attention span to read a simple book.

Further, it is simply human nature to resist information which contradicts one’s own longstanding but unexamined education, beliefs and practices. The enablers and spies for government, *a.k.a.* business accountants, are generally informed by the media, the IRS, thousands of IRS “experts,” and business schools, that they must give all “independent contractors” a Form W-9 to collect their social security number for the purpose of reporting “income” paid to such persons on an IRS Form 1099.

If a person *refuses* to provide a Form W-9 to an accountant upon request, a “savvy” lawyer will step up and explain the requirements of law. One typical such lawyer, Ms. Politte of Hall Estill, for

Behold the Accountant!



example, has written an article (dated February of 2016) entitled “What if a Contractor or Vendor Refuses to Provide a W-9 for a 1099?” and such article is still posted on the internet as (apparently) legal advice. Unfortunately, while Ms. Politte *refers* readers to certain sections of the Internal Revenue Code and the Code of Federal Regulations, she does not actually provide the actual language of the law to her readers. Here is a typical statement:

If a business (including sole proprietors) pays a contractor, vendor, or another person (collectively referred to as a “payee”) \$600 or more for services, goods, or rent over the course of a tax year, the business is required to report these payments to the IRS on an information return called Form 1099. **See, e.g., I.R.C. § 6041.** The 1099 must state the payee’s name, address, and tax identification number (TIN), as well as the total amount paid to the payee during the year, in order to be valid. **See I.R.C. §§ 6041 and 6109(A) (3); Treas. Reg. §§ 1.6041-6 and 301.6109-1.**

Note that it is claimed that a 1099 “must state the

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Disclaimer: This article constitutes an opinion based on written laws and regulations. It is not legal advice.

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Certificate Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Give Form W-4 to your employer. Your withholding is subject to review by the IRS.	OMB No. 1545-0074 2024
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payee's name, address, and tax identification number (TIN)" in order to be valid. Ms. Politte further states that:

IRS Form W-9 is typically used by a business to request a payee's name, address and taxpayer identification number (TIN) *so the business can issue a 1099 ...* A business relies on the W-9 form as a source for a payee's personal information, *the most important of which is the taxpayer identification number (TIN)*. In the case of individuals, a TIN is actually the person's social security number (SSN).¹

Indeed, Ms. Politte is correct. Businesses who pay amounts to vendors or contractors generally *already know* the person's name and address, so the sole purpose of handing out the W-9 is to obtain an SSN. The W-9 *looks* like a very important IRS form collecting a very important federal number, and it requires a person to sign it under penalty of perjury! So it must be a form *required* to be filled out by contractors, right? Well, *no*.

No one is required to fill out a W-9 form

Let's take a look at the actual form. In the upper right-hand corner, the Form W-9 states, **"Give form to the requester. Do not send to the IRS."**²

At first glance, this may seem insignificant, but a comparison with the Form W-4, for example, shows how unusual this is. The W-4, in the same upper right-hand space, says **"OMB No. 1545-0074"** (see above).³

Comparing the Form W-9 with the Forms W-2, W-3, W-4, W-8s, etc. (easily done by searching the forms on [irs.gov](https://www.irs.gov)), it becomes obvious that all other "W" forms have OMB numbers on them in the upper right-hand corner – but the W-9 form *does not*.

In the instructions for the Form W-4 (and in the instructions for all of the other forms listed as well, with the sole exception of the W-9), the significance of an "OMB number" is explained via a Privacy Act and Paperwork Reduction Act Notice. Here's the notice for the W-4, in pertinent part:

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States.

You are **not required** to provide the information requested on a form that is subject to the Paperwork Reduction Act **unless the form displays a valid OMB control number**.

So a person is *not required* to provide information on a form unless it displays a valid OMB control number. But let's compare and contrast with the instructions for a Form W-9. And there is literally no comparison, because the W-9 instructions do not have any Privacy Act or Paperwork Reduction Act notice at all.⁴

Sixty-plus years ago, Congress passed the Paperwork Reduction Act to prevent government agencies from making requests for information that are not authorized by federal law. Under the P.R.A., all government request ("reporting") forms designed to be imposed on more than ten persons must be approved by the Office of Management and Budget (OMB) and bear an OMB control number to be valid.

Congress has ensured that no person can be penalized for not complying with a "collection of information" form if (a) the form doesn't display an OMB control number or (b) the agency fails to inform the person filling out the form that they are not required to respond if the collection information form does not have a valid OMB number (via a Paperwork Reduction Act notice):

44 U.S.C. § 3512. Public protection
 (a) Notwithstanding any other provision of law, *no person shall be subject to any penalty for failing to comply with a*

Form W-9 (Rev. March 2024) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification Go to www.irs.gov/FormW9 for instructions and the latest information.	Give form to the requester. Do not send to the IRS.
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1. All quotes from Ms. Politte are found at <https://www.hallestill.com/news-insights/what-if-a-contractor-or-vendor-refuses-to-provide-a-w-9-for-a-1099>. All emphases within direct quotes are added throughout, unless otherwise noted.
 2. See the latest revision of this form (3-2024) at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>.
 3. This OMB number, 1545-0074, is now applied to *many* different IRS forms, whereas it used to be applied primarily to a Form 1040 and its schedules.
 4. This can be verified by reading the 7-page instructions at <https://www.irs.gov/pub/irs-pdf/iw9.pdf>

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collection of information that is subject to this subchapter if—

(1) the collection of information *does not display a valid control number assigned by the Director* in accordance with this chapter; or

(2) the agency *fails to inform the person* who is to respond to the collection of information *that such person is not required* to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto. (emphasis added)

Since the W-9 contains no OMB control number, nor any Paperwork Reduction Act Notice anywhere on the form or in its instructions, it is consequently, under the laws of the United States, a form not required under law to be filled out by *anyone*. It seems plain that there can be *no penalties* for not completing a form W-9.

Forms 1099-MISC or 1099-NEC do NOT require taxpayer identifying numbers for “recipients of payments”

Most people are familiar with the Form 1099-MISC, which has long been used by accountant types to report payments made to independent workers and companies to the IRS. In 2015, however, Congress passed the “PATH” Act with the Orwellian title of “Protecting Americans from Tax Hikes Act.” Included in its provisions was Sec. 201, which modified filing dates for “employee wage” and “nonemployee compensation” returns to “improve compliance.” It required “any returns or statements required by the Secretary to report nonemployee compensation” to be filed by January 31st of the year rather than February 28th, see 26 U.S.C. § 6071. It must be noted that the full phrase “nonemployee compensation” appeared for the first and only time in the Internal Revenue Code

with the passage of the PATH Act.

In order to separate Form 1099 “information returns” due on February 28 from those now due, according to the PATH Act, on January 31, the IRS resurrected an old form originally given an OMB number in 1980 and retired shortly thereafter. That form is now called a Form 1099-NEC (“nonemployee compensation”). Whether a business accountant believes they must file a 1099 MISC or a 1099-NEC, however, the same “return” requirements are found at 26 U.S.C. § 6041:

Sec. 6041. Information at source

(a) Payments of \$600 or more

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ...of \$600 or more in any taxable year ... shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and *the name and address of the recipient* of such payment. ...

(c) Recipient to furnish name and address

When necessary to make effective the provisions of this section, *the name and address of the recipient* of income shall be furnished upon demand of the person paying the income.

This seems rather plain: what is required for reporting amounts paid to “the recipient of such payment” is merely a name and address, and it is only a name and address which shall be furnished upon demand. That is what Congress has required in the law.

The regulations implementing § 6041 make plain what is actually required in Forms 1099-MISC and –NEC as well:

§ 1.6041-6 Returns made on Forms 1096 and 1099 under section 6041; contents and time and place for filing.

(a) ***In general.*** Except as provided in paragraph (b) of this section, returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) ... The *name and address* of the person making

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the payment and the *name and address* of the recipient of the payment shall be stated on Form 1099. If the present address of the recipient is not available, the last known post office address must be given. See section 6109 and the regulations in part 301 of this title under section 6109 for rules requiring the inclusion of identifying numbers in Form 1099.

(b) **Exception.** Returns made on Form 1099 reporting *nonemployee compensation* shall be filed on or before January 31 of the year following the calendar year to which such returns relate.

Note that only a “name and address,” again, is stated as required to be shown. Note also that the regulation fails to state that “identifying numbers” are required on these Forms 1099; it only refers the reader to “see” the “rules” for inclusion of numbers.

It has yet to be shown that Ms. Politte is correct when she states that a Form 1099 must contain a taxpayer identifying number in order to be “valid.” As we have already seen, the statutes and regulations she cited only required a “name and address.” What does § 6109 require with respect to the inclusion of identifying numbers?

Required to request?

Ms. Politte refers her readers to I.R.C. § 6109(A)(3) and its corresponding regulation at 26 C.F.R. (“Treas. Reg.”) § 301.6109-1 for the proof that a Form 1099 is only valid if it contains the TIN of the payment recipient. § 6109(a)(3) states:

Supplying of identifying numbers.—*When required by regulations* prescribed by the Secretary: ...

(3) Furnishing number of another person.—Any person required under the authority of this title to make a return, statement, or other document with respect to another person *shall request* from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

§ 6109(a)(2) provides that “a person whose identifying number is *required to be shown* on a return of another person shall furnish to such other person such identifying number as may be prescribed ...” But as we have shown above, no identifying number is required with respect to “returns” under § 6041, the law governing the Forms 1099-MISC and –NEC. Thus, when an

accountant requests the number, the recipient of the payment has no requirement to give it.

Nor has the Secretary of the Treasury required numbers where the law does not. The IRS regulation at 26 CFR §301.6109-1(a) (cited by Ms. Politte) states that “A U.S. person whose number *must be included* on a document filed by another person must give the taxpayer identifying number so required to the other person on request.” Again, such number is not required to be included under 26 U.S.C. § 6041, and its implementing regulation also does not expressly state that an identifying number is required.

Notably, 26 C.F.R. § 301.6109-1(c) clarifies that the only persons of whom a *request* for an identifying number *must* be made are foreign persons, *not* citizens. Subsection (c) states in relevant part:

(c) Requirement to furnish another's number. Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section as required by the forms and the accompanying instructions. ... *If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section [all foreign persons] such person must request* the other person's number. The request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and *has complied with the request provision of this paragraph (c), such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. ...*

In summation, an examination of the relevant law and its implementing regulations reveals that there is **no requirement** for any citizen to give any tax id number of any kind to an accountant or other person requesting it on a W-9 or in any other manner. The tyranny of the IRS would be greatly reduced if the people understood this law, and acted accordingly.

