

# Transport Topics

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## How to Avoid IRS Penalties on Tax ID Numbers

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Some of the worst correspondence you can receive from the IRS is a notice of a tax penalty. We recently received such a notice, alleging that we had submitted incorrect identification information about motor carriers that we had paid for services rendered. Then we received a visit from IRS agents.

The IRS can impose a penalty for getting tax identification numbers wrong. A TIN is either a corporate or personal tax identification number or a person's Social Security number. And there are different violations, including filing TINs too late, not correcting them after a request from the IRS to do so, or failing to file corrected submissions before the Aug. 1 deadline.

When the IRS informs your company of a proposed penalty, you have the option of telling the IRS, in writing, why you think the penalty is not deserved. Sometimes the IRS will send a notice via a "form" letter, in which the language implies that you need to comply but you do not need to respond. I suggest that you always respond to any document from the IRS, form letter or not. I also suggest that you send your response "return receipt requested."

In the past, you could respond with a reasonable explanation of the situation, and usually the IRS would send a letter back, saying that the penalty had been waived. Recently, I had a conversation with an IRS representative, who stated that the IRS has changed its lenient enforcement posture. She said the agency would now aggressively pursue potential TIN violations, and would follow up on explanations.

The requirements are rather simple. You, as the paying company, are required to report to the IRS what you paid to any firm or person that conducts business under a Social Security number, or is a law firm or Canadian carrier. You also must submit a copy of Form 1099 to the payee as well as to the IRS.

If the company is incorporated, or if you paid that company or person less than \$600 in the tax year, you do not have to report it to the IRS. But the IRS may ask how you determined whether the payee was incorporated. The easiest way to protect yourself in this case is to have the payee fill out a W-9 form and keep it on file.

If you use a factoring service instead of sending payment directly to the payee, you could create a serious problem if you report the factoring company to the IRS as the payee. The IRS tax specialists who were in our office for several days were aggressively looking for this specific violation.

Most of our problems were caused by wrongly entering a tax ID number into our database. It is easy to "fat thumb" the computer keyboard. I suggest that before you submit 1099s to the IRS that you print them out and look for missing or extra digits, hyphens or anything else that may be incorrect in the TINs. I also suggest you review the documents with your accountants or legal counsel.

If you submit a TIN to the IRS and a digit or a hyphen is wrong, you have filed an incorrect report and are subject to a \$50 fine for each incident. The maximum fine that you can be assessed in a calendar year is \$250,000. However, the IRS can sometimes take this even further. If you do not have a completed W-9 on a specific payee, and you cannot provide the IRS with the correct information about that payee, the IRS has the option of imposing another penalty of 30% of



whatever you paid the payee for not withholding the proper amount.

You will find it very difficult to remain in compliance with the IRS if you fail to maintain accurate records. You must be able to provide documentation supporting your submissions. If you undergo a compliance check, you could be asked to provide information on all of the payees you did not submit, as well as supporting information explaining why you did not submit them. That's where the W-9 forms come in, and it is imperative that all of the fields in the form are filled out — and the box, acknowledging that the business is in fact incorporated, must be checked.

Also, the IRS requests a physical address, as opposed to a post office box, for the payee. This has a potential benefit for you. If you are ever forced to take a payee to court, you will need the company's physical address for the process server.

We had our accountants present when the IRS came to our office to check our TIN records. A compliance check is not an audit, but it can turn into one rather easily. Fortunately, in our case, we were in pretty good shape. We were able to produce "back up" on the TINs in question.

Clarification of this penalty can be found in IRS Publication No. 1586.

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