

Lancaster Accounting & Tax Service

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1099 NEC Backup Withholding

Payors are required by law to collect a payee's legal name, TIN (SSN, EIN, ITIN), and payee's certification of exemption from backup withholding. When a payee refuses to provide the payor the required information, or provides a TIN that does not match IRS records, then IRC § 3406 and Reg. §31.3406(a)-1 require the payor to withhold BWH from any payments made to the payee, which will be reported on the appropriate Form 1099 or

W-2G. In the case of reportable payments or interest, IRC § 3406(a)(1) states that BWH is required when—

1. A payee fails to furnish a TIN to the payor in the manner required,
2. The Secretary notifies the payor that the TIN furnished by a payee is incorrect,
3. There has been a notified payee underreporting described in subsection (c), or
4. There has been a payee certification failure described in subsection (d)

In any of these cases, the payor shall deduct and withhold from such payment a tax equal to the product of the fourth lowest rate of tax (current tax brackets are 10%, 12%, 22%, 24%, 32%, 35%, and 37%) applicable under section 1(c) and such payment.

BWH may be required under one of two programs:

Backup Withholding “B” Program

A taxpayer becomes subject to the Backup Withholding “B” Program (BWH-B) when—

- **They do not provide the payor with their TIN in the required manner.**
- **The IRS notifies the payor that the TIN that was provided is incorrect.**

Under the BWH-B program, either a CP1200 or CP2100A Notice is sent to the taxpayer who failed to provide a *correct* TIN to the payor for reporting on the required information return (www.irs.gov/businesses/smallbusinesses-self-employed/backup-withholding-b-program)

Backup Withholding “C” Program

<http://www.irs.gov/pub/irs-pdf/p1281.pdf>

Updated Form W-9 (March 2024) at www.irs.gov/pub/irs-pdf/fw9.pdf

Topic No. 307, “Backup Withholding” at www.irs.gov/taxtopics/tc307

<http://www.taxnotes.com/research/federal/irs-guidance/fact-sheets/fact-sheet-covers-basics-backup-withholding-obligations/7fwt4>

Preventing or Stopping Backup Withholding

If a payor notifies a worker that the TIN given was incorrect, the worker can usually prevent backup withholding from starting, or stop it once it has begun, by giving the payor their correct name and TIN and certifying that the TIN they supplied is correct. If the worker receives a second notice from that payor, the worker will need to provide them with a copy of their Social Security card showing their correct name and SSN.