



MANAGED ACCOUNTING LLC

**TO 1099 OR
NOT TO 1099? (2018)
REFERENCE GUIDE**

OBLIGATORY DISCLAIMER

“Does this need a 1099?” Frequently the answer is, “It depends,” which then requires searching through a labyrinth of complex, nuanced and arcane IRS rules. With this reference guide, I’ve done my best to bring a modicum of clarity to the “To 1099 or Not 1099” conundrum. These materials are not legal or tax advice, and are provided “AS IS” with NO GUARANTEES OR WARRANTIES of any kind. You are encouraged to do your own research and seek advice from tax counsel as needed.

About 4L

4L – a decidedly different accounting firm -- provides outsourced Accounting Department services to law firms.

Our mission is to partner with law firms to make them more efficient & productive, easier to manage, and more profitable.

During calendar year 2017, 4L's billing team produced more than 110,000 invoices with a face value of \$295,000,000 for 66 law firms with lawyers in 33 states.

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GETTING READY FOR FORM 1099 REPORTING

Are there payments from the Accounts Payable system (or another bank account) made to or on behalf of a partner, shareholder or employee that should be included in compensation and reported on Schedule K-1 or Form W-2? Examples: relocation or moving expenses; personal expenses; expense reimbursements without receipt documentation.

Does the firm engage independent contractors whose compensation should be reported on Form W-2, rather than Form 1099-MISC?

Does the firm have a W-9 and/or Tax Identification Number (TIN) on file for each payee who meets the criteria for Form 1099 reporting?

Do any payee names or TINs appear multiple times in the Accounts Payable system or in other check registers? If so, the multiple entries must be consolidated. Only one Form 1099-MISC should be filed for each payee/TIN.

Does the payee name used in Accounts Payable match the "Name" on the first line of the Form W-9? The name and TIN reported on Form 1099-MISC must match the IRS records.

Did the IRS notify the firm that a TIN reported last year was incorrect? If so, the firm's records must be corrected/updated filing this year's Form 1099-MISC.

INTRODUCTION TO LAW FIRM FORM 1099-MISC REPORTING

Law firms are engaged in a trade or business under IRC Section 6041(a) and must report certain financial transactions to the IRS using informational returns Form 1099-MISC, Form 1099-INT, and/or Form 1099-S.

1. EXCEPTIONS TO FORM 1099-MISC REPORTING.

Not every financial transaction is reportable even though the payment may be taxable to the payee. These payments are not reported on Form 1099-MISC:

- 1.1. **Payments to a Person Aggregating <\$600 for the Year.** After aggregating payments from all sources (e.g., firm operating account; client trust accounts), if the total amount paid is less than \$600 for the year, then no Form 1099-MISC reporting is required.
- 1.2. **Payments Reportable Elsewhere as Compensation.** Payments reportable on Schedule K-1 or Form W-2, Form 1099-INT, and Form 1099-S are not reported on Form 1099-MISC.
 - 1.2.1. **Example: Payment of Personal Expenses.** Assume your firm pays personal expenses on behalf of a partner, shareholder or employee (e.g., moving and relocation expenses), such payments are reportable on the person's applicable Schedule K-1 or Form W-2.
- 1.3. **Reimbursements with Receipts.** Expense reimbursements are not reported on Form 1099-MISC, provided reimbursement is accompanied by receipts or other documentation. (Absent documentation, the amount should be treated as compensation to the payee reportable on either on Schedule K-1, Form W-2 or, if the payee is not a partner, shareholder or employee, then as nonemployee compensation on Form 1099-MISC Box 7.)

1.3.1. **Example: Third Party Reimbursement.** Assume the firm reimburses a law student for travel expenses, lodging and meals for a job interview. Provided the payee provides documentation to support the out-of-pocket expenses, the payment is not reported on Form 1099-MISC.

1.4. **Credit Card Transactions.** Payments made to vendors via credit cards and payments to credit card merchants are exempt from Form 1099-MISC reporting.

1.4.1. **Example: Design Services.** Assume the law firm pays a vendor for services which would be reportable on Form 1099-MISC if paid by check, but such payment is made via the firm's American Express card. Neither the credit card payment to the vendor nor the subsequent payment of the credit card balance is reportable on Form 1099-MISC.

1.4.2. **Example: Personal Expenses.** Assume the law firm pays a vendor for personal services provided to a partner or employee via the firm credit card. The amount paid is reportable as compensation to the partner or employee. (See Example 1.2.1)

1.5. **Payments to Governmental Entities.** Payments to federal, state, local and other governmental agencies and courts are exempt from Form 1099-MISC reporting.

1.6. **W-9 Status Exception.** No Form 1099-MISC reporting is required if the payee is a:

- ✓ C Corporation
- ✓ S Corporation
- ✓ Trust/Estate
- ✓ Exempt Entity
- ✓ LLC-taxed-as-a-C-Corporation
- ✓ LLC-taxed-as-a-S-Corporation

1.6.1. **Substantiation of W-9 Status Exception.** To confirm the payee meets the W-9 exception criteria, the firm should have on file a Form W-9 signed by the payee certifying its taxation status.

- 1.6.2. **Exception to the W-9 Exception.** If the payment is for medical/healthcare services, legal services or gross proceeds paid to a lawyer, then reporting on Form 1099-MISC is required even though the payee may be a corporation or a LLC-taxed-as-a-corporation. (See §§ 2.4 and 2.5)
- 1.7. **Middleman Transaction Exception.** If the firm is merely acting as a “middleman” in a transaction involving a client (as is the case with many client trust account transactions), then the payment is not reported on Form 1099-MISC.
- 1.7.1. **Example: Refund of Trust Account Balance.** Assume the firm repays the unused balance of money held in the client trust account, the amount refunded is not reported on Form 1099-MISC.
- 1.7.2. **Example: Remittance of Settlement Funds.** Assume funds are transferred to the firm’s client trust account in settlement of a dispute. When the firm remits the amount due to the client or adverse party, the firm acts as “middleman” and no Form 1099-MISC reporting is required.
- 1.7.3. **Example: Payment of Lienholders.** Assume the firm remits payments to a third party who has filed a lien with the firm against the client’s settlement. Such payments are not reported on Form 1099-MISC, except for such payments as may be due to co-counsel or to a prior law firm for services.
- 1.7.4. **Example: Payment of client trust funds to the Law Firm.** When client trust funds are remitted by the law firm to itself in payment of legal services (and costs), no Form 1099-MISC reporting is required.
- 1.7.1. **Exception to the Middleman Transaction Exception.** There are several exceptions to the Middleman Transaction Exception. See Examples 2.2.7 and 2.2.8.

- 1.8. **Payments for Goods and Other Stuff (No Services).** If the payment is made for “goods” (e.g., office supplies; furniture; equipment) or other considerations (e.g., insurance premiums) – which involve no “services” component (e.g., payment covering both the cost of goods plus services) – then the payment is not reported on Form 1099-MISC. [See §2.2]
- 1.9. **Payments to Foreign Contactors Exception.** Work performed outside the U.S. by a foreign contractor (noncitizen) is not reported on Form 1099-MISC. (No backup withholding is required.)
- 1.9.1. **Verifying Contractor’s Noncitizen Status.** The firm may rely upon certain assumptions regarding the foreign contractor’s status [see, Treas. Reg. §1.441-1(b) (3)]. However, if the contractor is an individual, she or he may be a U.S. citizen living abroad. To verify contractor is not a U.S. citizen, the firm should require the contractor to complete Parts I and IV of Form W-8BEN which the firm should maintain in its files.
- 1.9.2. **Work Performed in the U.S. by a Foreign Contractor.** If any portion of the work is to be performed in the U.S., the firm must withhold taxes for payments of the “U.S. source income” (i.e., payments related to work performed in the U.S.). The foreign contractor must obtain a TIN and the firm must withhold and remit the amounts withheld to the IRS. At year-end the firm must file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- 1.9.1. **Example: Foreign Co-Counsel.** Your firm engages a foreign law firm to act as co-counsel on a patent or copyright filing in another country. Provided all of the work by foreign law firm is performed outside the U.S., no withholding or Form 1099-MISC reporting is required.

1.9.2. **Example: Foreign Intern.** Assume your firm hosts a foreign lawyer who will work in your office as part of an “exchange program.” Certain payments made to the foreign lawyer (e.g., to cover living expenses) may be compensation subject to federal and state withholding and reportable on Form W-2. The foreign lawyer must obtain a TIN and may file a U.S. tax return at year-end to obtain a refund, if appropriate.

1.10. **Interest Payments.** See §3.

1.11. **Proceeds of Real Estate Transactions.** See §4.

2. **WHAT PAYMENTS ARE REPORTABLE ON FORM 1099-MISC?**

UNLESS THE PAYEE OR UNDERLYING FACTS RELATING TO THE PAYMENT FALL INTO ONE OF THE “EXCEPTION” CATEGORIES IN §1, the payments must be reported on Form 1099-MISC.

2.1. **Rent Payments.** Payments for rent are reportable on Form 1099-MISC Box 1, unless one of the exception criteria applies (see, §1). For Form 1099-MISC reporting purposes, “rent” includes office lease payments (inclusive of rent, real estate taxes and operating costs), equipment rental, renting of meeting rooms, banquet halls and booth space at an event. Rent also may include other payments made to third parties by the firm on behalf of the landlord.

2.1.1. **Example: Aggregate Rent Payments.** Landlord details the law firm’s annual rent payments into four parts: \$100,000 base rent; \$15,000 rent escalation, \$12,000 building operating costs; \$5,000 for real estate taxes. The amount reportable on Form 1099-MISC, Box 1 is the aggregate of all four amounts: \$132,000.

2.1.2. **Example: Payments on Behalf of Landlord.** As an accommodation to the landlord (often an affiliated entity), the law firm pays a nominal rent, plus the landlord's mortgage, property insurance and real estate taxes. The aggregate amount of such other payments also should be included in the rent amount reported on Form 1099-MISC Box 1 to the landlord.

2.1.3. **Example: Subletting Rent to a Law Firm Landlord.** Assume your firm subleases space from another law firm. If the law firm landlord is organized as an entity taxed a sole proprietor or partnership, then a Form 1099-MISC is required for the rent (in Box 1).

2.2. **Payment for Services Provided by Others.** Payments for "services" must be reported on Form 1099-MISC Box 7, unless one of the exception criteria applies (see §1).

For Form 1099-MISC reporting purposes, "services" includes payments for any activities where the payee performs labor or expends work effort.

Examples include:

- ✓ Consultants
- ✓ Independent contractors
- ✓ Expert Witnesses
- ✓ Transportation costs
- ✓ Registration fees (e.g., CLE)
- ✓ Repairs and maintenance
- ✓ Honorarium or speakers' fee
- ✓ Recruiting or headhunter fees
- ✓ On-premise catering with servers
- ✓ Broker's fee (e.g., insurance; real estate)
- ✓ Advertising materials involving design or graphic services
- ✓ "Retirement" payments not covered by a qualified retirement plan

The amount reportable includes both the labor or work component and amounts paid for products, materials or parts supplied with the services provided, unless the cost of such products, materials or parts are substantiated by receipts. (If receipts are provided, the firm may [but is not required to] report only the labor or work amount.)

- 2.2.1. **Example: No “Services” Provided.** Delivery of goods is not considered a “service”. For instance, if your office supply vendor delivers a product to your office, no Form 1099-MISC reporting is required. If the firm leases a piece of equipment (which is to be “maintained” by the lessor), the installation of replacement parts does not convert the lease payments into a “service.” Similarly, if the office supply vendor places the firm logo on a product, such an act does not convert the “goods” purchased into a “service.”
- 2.2.2. **Example: Advertising Services Example.** Assume the firm purchases advertising space in a publication and the publication’s art department designs the advertising copy. Because “creative” effort is involved, the entire cost of the advertisement is a “service” and is reportable on Form 1099-MISC in Box 7.
- 2.2.3. **Example: Design Services Example.** In Year 1 a firm hires a design firm to create and print a brochure. Because the payee designs the brochure, the entire cost to produce and print the brochure is a “service.” Assume in Year 2 the firm pays for a reprint of 2,000 copies of the brochure. The cost of the reprint in Year 2 is not considered a “service.”
- 2.2.4. **Example: IT Consultant Services and Parts Example.** IT consultant invoices the firm for software, parts and labor to repair/upgrade computer equipment. Since work effort is involved, the total paid to the IT consultant – for software, parts and labor – is a “service” and is reportable on Form 1099-MISC in Box 7. (If the IT consultant provides original receipts for the costs of the software and parts, the firm may report only the labor portion on Form 1099-MISC, but this approach is optional for the firm.)

- 2.2.5. **Example: Scholarship.** Assume your firm provides a scholarship to a person who is not an employee (or a dependent of a partner or employee). Provided no labor or work is required from the scholarship recipient, the scholarship is not considered payment for “services” and is not reported on Form 1099-MISC.
- 2.2.6. **Example: Employment Dispute.** Assume your firm settles an employment suit with a former partner or employee. The aggregate settlement amount (including fees paid separately to the adverse party’s lawyer) is reportable on either Schedule K-1 or Form 1099-MISC in Box 7 (nonemployee compensation) if to a former partner or on Form W-2 if to a former employee.
- 2.2.7. **Example: Experts/Advisors/Consultants.** Assume your firm remits client trust funds to an expert, technical advisor or investigator, and the firm was involved in either selecting or directing the work of such person; then the payments are reportable by the law firm on Form 1099-MISC Box 7 (nonemployee compensation) even though the payee technically may have been retained by the client. (Example 2.2.7 is an exception to the Middleman Transaction Exception; see §1.7.)
- 2.2.8. **Example: Family Office Example.** Assume your firm acts in a “family office” capacity and pays personal expenses for a client from a client trust account. If those payments are for “services” (including medical/healthcare services and legal services), those payments must be reported by the law firm on Form 1099-MISC, even if the invoice for such services to addressed to the client. (Example 2.2.8 is an exception to the Middleman Transaction Exception; see §1.7.)

- 2.3. **“Retirement” Stipends.** When the firm makes payments to former partners and employees from firm funds, such payments are reportable on Form 1099-MISC Box 7 (nonemployee compensation). Payments made to former partners and employees from a qualified retirement plan are reported by the qualified retirement plan (not the firm) on Form 1099-R.
- 2.4. **Payments to Medical/ Healthcare Service Providers.** Payments for medical or healthcare treatment or services are reported on Form 1099-MISC Box 6 (medical and healthcare payments) unless one of the exception criteria applies; provided, however, the exception criteria set forth in ¶1.6 does not apply even if the provider is a corporation or an LLC-taxed-as-a-corporation.

Payments to a medical/healthcare service provider for photocopies of medical records are not considered “medical/healthcare services” and are not reported on Form 1099-MISC

- 2.4.1. **Example: Evaluation or Treatment.** If your firm pays B.F. Pierce, MD, a Medical Corporation to evaluate a client or provide expert testimony, the payment is reportable on Form 1099-MISC Box 7 even though the payee is a corporation.
- 2.4.2. **Example: Medical Records.** Assume your firm pays J. McIntyre, MD for copies of medical records. Copying medical records is not a medical or healthcare service and such payments are not reported on Form 1099-MISC.

2.4.3. **Example: Lien Payments.** If your firm remits payment to a medical/healthcare service provider under a perfected lien against your client's settlement proceeds, such payment is not reported under the Middleman Transaction Exception. (See §1.7)

2.4.4. **Example: Insurance Plan Benefits.** Insurance premiums are not medical or healthcare treatment or services and are not reported on Form 1099-MISC. (Premium payments may be reportable as compensation – e.g., on Schedule K-1.)

2.5. **Payments for Legal Service Providers.** Payments for legal services are reportable on Form 1099-MISC in either Box 7 (nonemployee compensation) or Box 14 (gross proceeds paid to an attorney), unless one of the exception criteria in Section 1 applies (but see §1.6).

2.5.1. **Example: Firm-hired Law Firm.** Assume your firm engages another law firm to handle a transaction for the firm or act as co-counsel on a client matter. Fees paid to the other firm are reportable on Form 1099-MISC in Box 7.

2.5.2. **Example: Adverse Parties and their Lawyers.** Assume your firm settles a business dispute with an adverse party (“AP”), the reporting requirements vary depending upon how the payment is structured:

(A) One Payment: to AP. Assume the dispute is settled for \$300,000 paid in lump sum to AP. The \$300,000 amount is reportable on Form 1099 Box 3 (other income).

(B) One Payment: jointly to AP and AP’s Lawyer. Assume the dispute is settled for \$300,000 paid jointly to AP and AP’s Lawyer. The entire \$300,000 amount is reportable to AP on Form 1099-MISC Box 3 (other income). The entire \$300,000 amount also is reportable to AP’s lawyer on Form 1099-MISC Box 14 (gross proceeds paid to an attorney)

(C) Two Separate Payments. Assume the dispute is settled for \$300,000 with one payment to Adverse Party for \$200,000 and a second payment of \$100,000 to AP’s lawyer. The entire \$300,000 amount is reportable to AP on a Form 1099-MISC Box 3 (other income). The \$100,000 amount is reportable to AP’s lawyer on Form 1099-MISC Box 7 (nonemployee compensation).

2.5.3. **Example: Lien Payments.** Assume your firm remits client trust funds to your client’s Prior Lawyer (“PL”) under a lien filed by PL for proceeds of the settlement. Your firm must send PL a Form 1099-MISC Box 7 (nonemployee compensation) reporting the payment. The Middleman Transaction Exception does not apply because the payment is for legal fees earned by PL in securing the settlement (e.g., a co-counsel analogy).

2.6. **Barter Transactions.** The value of a barter transaction is reportable on Form 1099-MISC if the payment would have been reportable if paid by cash or check.

2.6.1. **Example: Barter Exchange.** Assume a client repaints the law firm's office in settlement or partial settlement of an amount due for legal services. The value of the legal services provided in exchange for the painting service is reportable on Form 1099-MISC Box 7 (nonemployee compensation).

2.7. **Client Trust Accounts – General Comments.** All payments made from client trust accounts (or any other account affiliated with the law firm) are subject to Form 1099-MISC reporting if the payment would have been reportable if made from the firm's business bank account. Even though the client trust account may be assigned the TIN of an IOTLA-agency, this does not exempt the law firm from reporting transactions on Form 1099-MISC.

2.8. **Form 1099-MISC and Schedule K-1 or Form W-2?** If a person is paid as an independent contractor for a portion of the year and then becomes a partner or employee, then that person will receive (i) a Form 1099-MISC covering compensation paid while an independent contractor and (ii) either a Schedule K-1 or Form W-2 for the time paid as a partner or employee. (If a person is a partner or employee for the entire year, all reportable compensation payments should be reported on the Schedule K-1 or Form W-2: issuing an additional Form 1099-MISC is inappropriate.)

3. **FORM 1099-INT REPORTING, INTEREST INCOME**

Form 1099-INT is used to report interest paid on loans and to report federal income tax withheld on vendor payments at the direction of the IRS or when a payee declines to furnish a valid tax identification number.

Payments of interest of \$10 or more is reportable on Form 1099-INT Box 1 (Interest income).

Interest payments to certain payees is not reported on Form 1099-INT for payments, including payments to corporations, tax-exempt entities, individual retirement accounts, medical savings accounts, U.S. agencies.

Interest paid to a partner in a partnership or to member of LLC-taxed-as-a-partnership is reportable on Schedule K-1 Line 5 (Interest Income), not on Form 1099-INT.

3.1.1. **Example: IOLTA Interest.** Interest earned on IOLTA-type bank accounts are not reported on Form 1099-INT.

3.1.2. **Example: Other Client Trust Accounts.** Interest earned on non-IOLTA accounts and credited to the benefit of the client is reportable to the client on Form 1099-INT Box 1 (Interest income).

3.1.3. **Example: Interest to Shareholders/Employees.** Interest paid to shareholders and/or employees is reportable on Form 1099-INT Box 1 (Interest income).

3.1.4. **Example: Interest to Partners.** Interest paid to partners (whether for a loan or characterized as “interest” on capital account balance) is not reported on Form 1099-INT, but on Schedule K-1 Line 5 (Interest income).

Amounts withheld as backup withholding in connection with a directive from the IRS or because a party will not provide the law firm a valid tax identification number must be reported on Form 1099-INT Box 4 (federal income tax withheld).

4. **FORM 1099-S, PROCEEDS FROM REAL ESTATE TRANSACTIONS**

The financial aspects of most real estate transactions must be reported on Form 1099-S even though the transaction may not be taxable. The person responsible for closing the transaction (usually a title company, but sometimes the law firm) must report the transaction using Form 1099-S.

5. **FILING DEADLINES AND REQUIREMENTS**

5.1. **Filing Deadlines.**

Form		To IRS	To Recipient
1099-MISC	Rent; payments to suppliers of health or medical services; payments for services	if payments are reported in Box 7, January 31; otherwise February 28	January 31
1099-INT	Interest income	February 28*	January 31
1099-S	Gross proceeds from sale or exchange or real estate	February 28*	February 15

If the filing deadline falls on a Saturday or Sunday, the deadline is the next business day. An extension of time to file Forms 1099 with the IRS may be obtained by filing Form 8809 with the IRS before the expiration of the statutory filing deadline; see, IRS Publication 1220 for the guidelines.

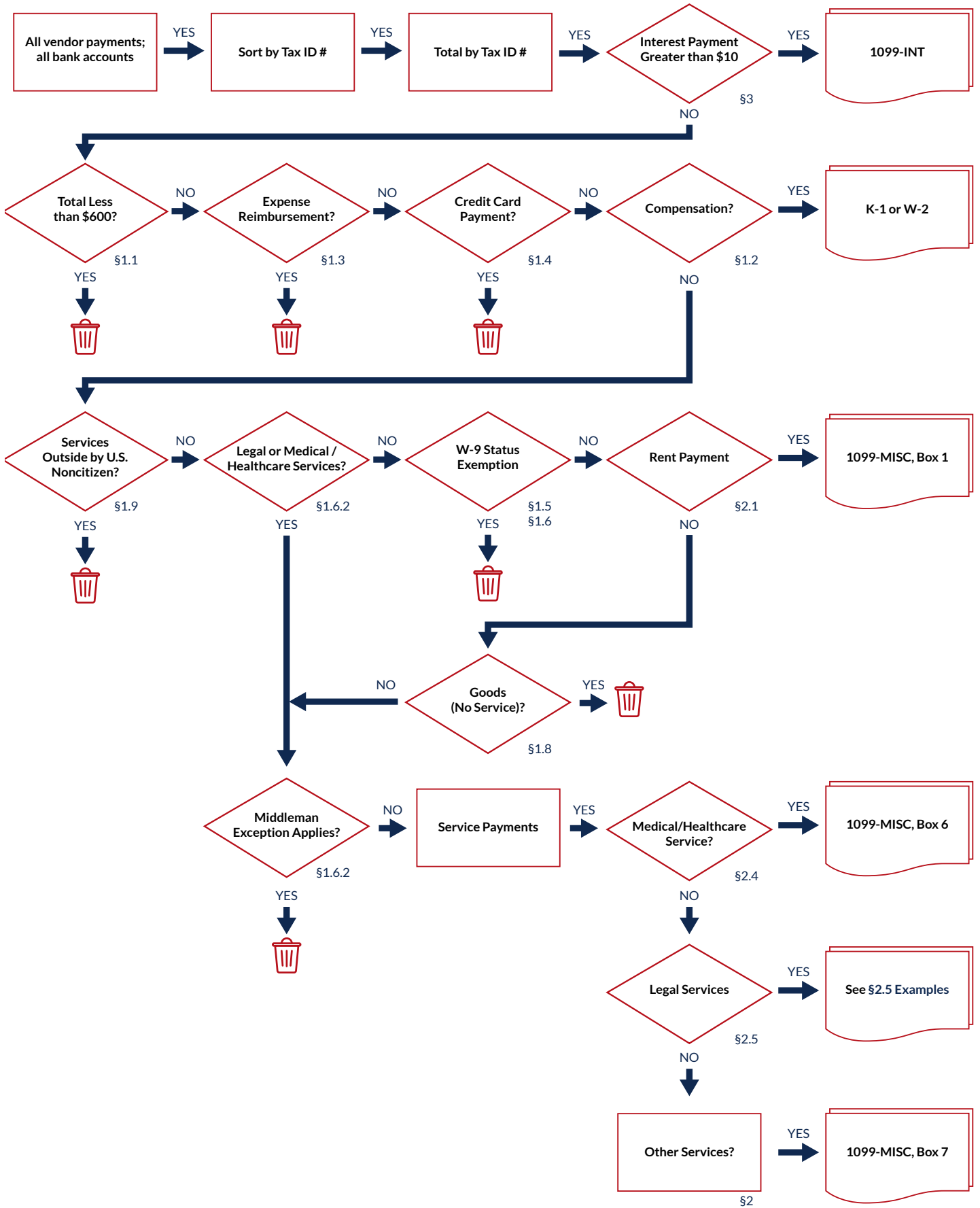
- 5.2. **Mailings to the IRS.** If you plan to mail your 1099s to the IRS, you must include a transmittal Form 1096 with each filing. Form 1096 summarizes all the numeric information on all the underlying 1099 forms with each submission.

A separate Form 1096 must be included for each different type of 1099 forms you are submitted – one 1096 for each batch of Forms 1099-MISC; one for each batch of Forms 1099-INT, etc. The IRS recommends that Forms 1099-MISC reporting nonemployee compensation (Box 7) payments be submitted separately from those reporting other types of reportable 1099-MISC income.

If you are uncertain as to where to file your 1096 and 1099s, go to page 7 of the 2018 General Instructions for Certain Information Returns.

- 5.3. **When Electronic Filing is Required.** Electronic filing is mandatory if you will be transmitting 250 or more Form 1099s for the year. To e-file, your firm must have a FIRE (Filing Information Returns Electronically) account with the IRS. It typically takes a minimum of 45 days to establish a new FIRE account. Instructions for the FIRE account application and electronic filing generally can be found in IRS Publication 1220 available at www.irs.gov.

SAMPLE 1099 WORK PLAN FLOWCHART





ABOUT THE AUTHOR

Mike Marget is an erstwhile large law firm manager with tours of duty as COO at Katten Muchin, Jenner & Block and CFO at Holland & Knight, among others. He's currently president of 4L Managed Accounting and wants to help your firm grow. Learn more by calling 4L at 813.658.8575 or info@4L-Law.com

ABOUT 4L Managed Accounting

4L is a different type of accounting firm, comprised of former law industry professionals with experience advising law firm managing partners and COOs. Before founding 4L, we held titles like CFO & COO with real P&L responsibilities. Those experiences allow us to operate differently and to focus on customization, flexibility and bottom line results when tailoring solutions to firm challenges.

GET STARTED NOW

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