

**(SUGGESTED LETTER TO
THE COMPANY YOU WORK FOR:)**

Your Address
City, State, Zip

Date

Name of Company
Address of Company
City, State, Zip
Attention: *(name of company owner, if you know it)*

Dear *(name)*:

This letter is being sent to you as formal notice of the following facts concerning your issuance of a Form 1099-MISC to me and to others with whom you've contracted to manage rental properties [or whatever the enterprise is].

In January of this year (Name of Company) reported to IRS that it paid out funds to me during *(insert year)* (please see attached copy) in contradiction of specific IRS instructions covering proper use of Form 1099-MISC. IRS instructions (please see attached) specifically direct that the form is to be used only when payouts of funds were made in the course of a Trade or Business, and that no reports are to be made of any private funds paid out. (my emphasis)

You are hereby advised that "Trade or Business" is a legal term defined in the tax code (at 26 USC 7701(a)(26)); as follows:

The term "trade or business" includes the performance of the functions of a public office.

You are further advised that "includes/including" are also legal terms, also defined in Section 7701, as follows:

The terms "**includes**" and "**including**" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

In other words, "public office" is the controlling reference therein.¹ Therefore, unless *(name of company)* is in fact a "trade or business," issuing reports to that effect to IRS is

¹ "[T]he verb "includes" imports a general class, some of whose particular instances are those specified in the definition."

Helvering v Morgan's, Inc, 293 U.S. 121, 126 fn. 1 (1934);

erroneous and constitutes “bad payer data.” If such reporting is not corrected or withdrawn after notification of error, such error becomes legally fraudulent.

If you have any doubt about what constitutes a “Public Office,” Black’s Law Dictionary (6th Edition) states it this way: “*Essential characteristics of ‘public office’ are: (a) authority conferred by law, (b) fixed tenure of office, and (c) power to exercise some portion of sovereign functions of government.... Essential elements to establish a public position as ‘public office’ are: position must be created by constitution, legislature, or through authority conferred by legislature, portion of sovereign power of government must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control of superior power other than law, and position must have some permanency and continuity.*”

(*name of company*), to my knowledge, is not engaged in the conduct of the functions of a public office, nor is (*name of company*) connected by any other privileged nexus to the federal government in any way that I’ve been able to ascertain. Therefore, I must conclude that your payments to me are of a private nature, and do not derive from your company’s being in any shape or form a “trade or business,” as defined in the tax code.

Once a 1099 (or W-2) has been transmitted to IRS, it is legally assumed to be true and accurate, since it is signed under penalty of perjury by way of the transmittal Form 1096. However, your issuance of Forms 1099-MISC regarding amounts you have paid to me, being purely from private enterprise, cannot be characterized as payments connected to the functions of a public office or any other similar federal affiliate. Therefore, your identifying such payments as such is both erroneous and unlawful. Unless the Form 1099 you have issued to me is either withdrawn or corrected to zero by you, your error becomes willful and therefore fraudulent. It also opens (*company name*) to liability claims.

The importance of issuing correct tax information reports is emphasized by tax code provisions allowing for penalties and civil liability lawsuits concerning willfully erroneous information. Such information reports, if continued, become willful once formal notice—such as this one—is presented to the issuer concerning the law which governs information reports (1099’s, W-2’s, and K-1’s).

Please note that Title 26, Section 7434, of the United States Code applies to fraudulent 1099s, as well as to Forms W-2 and K-1. The section reads as follows:

“[I]ncluding... ...connotes simply an illustrative application of the general principle.”

Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95, 62 S.Ct. 1 U.S. (1941)

See also *Mobley v. C.I.R.*, No. 07-2019 (6th Cir. 2008); *Mueller v. Nixon*, 470 F.2d 1348 (6th Cir. 1972); *Pacific Nat’l Ins. Co. v. United States*, 422 F.2d 26 (9th Cir., 1970).

“Section 7434 – Civil Damages for fraudulent filing of information returns

“(a) In general

“If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

“(b) Damages

“In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of

“(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

“(2) the costs of the action, and

“(3) in the court’s discretion, reasonable attorneys’ fees.”

I am certain that you wish to adhere to the law in all respects, as do I, and thus I expect and hereby ask that you act immediately to withdraw or correct the Form 1099-MISC erroneously issued to me. I very much appreciate your cooperation.

Sincerely yours,

(Signature and Name of Sender)

USPS Registered Mail, No: