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## **SUBCONTRACTORS – 1099s**

If a worker is an employee the employer is responsible for withholding and paying the employment-related taxes. If a worker is a subcontractor, he is responsible for keeping his or her own records and paying his or her own income and self-employment taxes. Therefore, it is very important to determine whether your worker is an employee or a subcontractor.

The courts have considered many factors in deciding whether a worker is a subcontractor or an employee. They can be divided into three categories:

- **Behavioral control** evaluates whether you have the right to direct and control **how** the work is done (training and instructions),
- **Financial control** considers whether you have the right to direct and control the **economic** aspects of the work (significant investment, expenses, opportunity for profit or loss), and
- **Relationship of the parties** looks at how you and the worker view your relationship (employee benefits and written contracts).

All facts and circumstances of your situation must be examined to determine whether a worker is an employee or subcontractor. No single factor provides the answer.

While a contractual designation, in and of itself, is not sufficient evidence for determining worker status, a written contract describing the worker as a subcontractor may be viewed as evidence that you and the worker intended the relationship to be independent. If the parties are not acting in accordance with the terms of the contract, however, the contract may be ignored. The actual facts in each situation are more important than a contract, but the contract **may** be a deciding factor, all other things being equal.

## **REQUIRE W-9, FILE 1099**

If the worker is a subcontractor, before the subcontractor provides his services, require him to complete Form W-9, Request for Taxpayer Identification Number and Certification. By completing this form, the subcontractor accepts responsibility for paying his income and self-employment taxes. The subcontractor must supply his Social Security number or Federal Employment Identification number to you to accurately report to the IRS.

If this form is not in your files and the subcontractor is subject to IRS backup withholding, you may be responsible for paying a portion of the subcontractor's back taxes owed to the IRS.

If the subcontractor was paid over \$600 you must provide him with a 1099 – MISC form by January 31 of the following tax year and file the form with the IRS by February 28. For 2012 payments, copies of 1099-MISC forms are required to be filed with PA Department of Revenue.