

# Small Business Notes

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## **Federal Trade Commission Reminds Businesses of Identity Theft Responsibilities**

In an August 2023 release the Federal Trade Commission (FTC) reminded business owners of their responsibilities under the federal Fair Credit Reporting Act (FCRA) to victims of identity theft and to law enforcement agencies investigating such thefts to provide on written request copies of relevant transaction records relating to the identity theft.

Victims or law enforcement agencies, with the victim's approval, can request in writing records like invoices, credit applications, billing correspondence. The records must be provided within thirty days of receipt by the business of a written request. Note that in the case of victim authorized and approved request for law enforcement to receive the records, no subpoena is required.

In addition to a written request, the business can require that the party making the request provide:

- A specific address to receive the requested documents;
- Transaction dates and account numbers;
- Proof of identity like a government issued identification card or the same type of information verification the business is currently requesting from applicants;
- A police report;
- A completed fraud affidavit. Victims can use the FTC's Identity Theft Report at [IdentityTheft.gov](https://www.ftc.gov/identity-theft-report).

The business can refuse to provide the documents if it determines in good faith that:

- It cannot verify the true identity of the party making the request;
- The request for the information is based on a misrepresentation; or
- The information requested is Internet navigational data or information about a person's visit to an online website or online service;
- Another federal or state law prohibits the disclosure. Note, however, that a business may not deny disclosure based on the financial privacy provisions of the Gramm-Leach-Bliley Act.

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## IRS Continues Enforcement of 1099 Reporting Requirements to Reduce Under-reporting of Business Income

The IRS will continue its emphasis on compliance by business taxpayers with the requirements of Form 1099-NEC (Non-Employee Compensation) and Form 1099-MISC (Miscellaneous Payments).

Form 1099-NEC is used when payment is made to a non-employee, to include directors and advisors of the business; when the payment is for services to the payer business in the course of its trade or business, to include parts and materials used in provision of those services.

The payment can be to an individual, estate, or partnership and must be for at least \$600 over the tax year.

Form 1099-MISC is used for reporting payments for things like rents (when the payment is made directly to the property owner rather than to a rental agent or property manager) or payments for various elements of intellectual property like licenses for the use of patents, trademarks, and copyrights.

For both 1099-NEC and 1099-MISC the payments can be subject to backup withholding (for example when a payee has never provided the business payer with required information like its Taxpayer Identification Number (TIN)). In such a case the business payer would withhold 24% of the payment due to the vendor.

Note that the IRS updates each 1099 form and its instructions on an ongoing basis during the tax year.

## IRS Suspends Processing of New Claims for Employee Retention Credit

Concerned that small businesses are being scammed by promoters into filing ineligible claims for the Coronavirus Employee Retention Credit (ERC), the IRS announced in September 15, 2023, that it was initiating a moratorium on processing of new claims until at least the end of 2023.

The IRS also indicated in its announcement that it will apply “increased scrutiny” to claims filed before the moratorium whose processing is still pending. Special settlement procedures are being developed to help businesses that have been misled into filing ineligible claims on have resulted in improper credit or payments to those businesses.

The IRS notes especially that businesses should be aware that there is no separate application for the credit, as some promoters claim, but that application must be done on the taxpayers return or amended return.

The IRS has developed a new FAQ on the credit available online at [Frequently asked questions about the Employee Retention Credit](#).

# Small Business Notes

Past issues of Small Business Notes are available on the Department of Employment and Economic Development website at [Small Business Notes](#)



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