



Notice 989

(Rev. August 2015)

Commonly Asked Questions When IRS Determines Your Work Status is “Employee”

The issue of worker employment status is generally addressed under the SS-8 program or as part of an employment tax examination of a firm. Under the SS-8 program the IRS issues determination letters to firms and workers on the proper employment status of a worker for purposes of federal employment taxes and income tax withholding. The worker will generally be considered an employee if a firm has the right to control what will be done by the worker and how it will be done. A firm may be an individual, business, organization, state or other entity for which a worker performed services. If you are a worker who was treated as a independent contractor (or in some other nonemployee status) by a firm and the IRS changes your employment status to employee, you may have questions concerning your responsibilities as a taxpayer.

You can request a reconsideration of the prior determination regarding your Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* by sending a letter to the address provided to you by the examiner. You must have additional information concerning the relationship that was not part of the original submission, or identify facts that you think were not fully considered. Attach copies of the last correspondence you received from the examiner and the SS-8 determination to your request

1. What should I do now?

What you should do depends on whether or not you have filed a tax return reporting the income you earned and how the income was reported. You may be due a refund, you may reduce an existing tax liability, or you may owe additional tax as a result of the change to your status. You do not need to wait for corrected pay documents from the employer in order to file or amend your return(s) to reflect your new status. Please consider the following instructions and select the one that applies to your circumstances.

- **If you haven't filed a federal tax return yet**, you must file Form 1040, *U. S. Individual Income Tax Return*, for the affected tax year(s), reporting the income from Form 1099-MISC, *Miscellaneous Income* provided to you by your employer as wages on line 7. Since no social security or Medicare tax (FICA tax) was withheld from these wages, you must compute and pay the employee portion of these taxes with your return. Use Form 8919, *Uncollected Social Security and Medicare Tax on Wages* to compute FICA tax and ensure that you receive credit for this income with the Social Security Administration (SSA). See question 9 for instructions on computing FICA tax.
- **If you have already filed a federal tax return, but did not report the Form 1099-MISC Income**, you must file Form 1040X, *Amended U. S. Individual Income Tax Return*, for the affected tax year(s) to include the additional income as wages and re-compute your federal income. You must also compute and pay your portion of FICA tax on this income.

Use Form 8919 to compute FICA tax and ensure that you receive credit for this income with the SSA. For instructions on amending your return, see question 11.

- **If you have already filed a federal tax return and reported the income but did not compute the FICA tax on the income**, you must file Form 1040X for the affected tax year(s) to compute and pay the FICA tax due on this income. Use Form 8919 to compute FICA tax and ensure that you receive credit for this income with the SSA. For instructions on amending your return, see question 11.
- **If you have already filed a federal tax return, but reported your Form 1099-MISC income as self-employment income and not wages**, you must file Form 1040X for the affected tax year(s). You do not owe Self-Employment (SE) Tax, but you must compute and pay your portion of FICA tax on the income. Use Form 8919 to compute FICA tax and ensure that you receive credit for this income with the SSA. See question 6 for additional information. For instructions on amending your return, see question 11.

2. What is the time limit for filing an amended return?

Generally, a Form 1040X must be filed within 3 years after the date you filed the original return or within 2 years after the date you paid the tax, whichever is later, if your amended return will decrease your tax. You generally have 3 years after the date you filed the original return if your amended return will increase your tax. A return filed *before* the due date is considered filed on the due date. If an amended return is received after the time limit for filing it has expired, the amended return will not be accepted.

3. What if I already paid my portion of FICA tax with my original return using Form 8919?

If you already reported the income on your tax return and computed your portion of FICA tax using Form 8919, you will not need to amend your return as a result of the determination changing your status to employee. The determination letter should be kept with your tax records to substantiate the way you filed your return. But see question 6 if you deducted expenses on Schedule C.

4. What if the employer provides me with a corrected Form W-2 that reflects payment of my portion of FICA tax?

If the employer pays your portion of FICA tax on the income, that additional amount becomes income to you in the year it is paid. If you already paid FICA tax on the income, you can amend your return to request a refund of this tax at that time. If you do not receive a Form W-2 from the employer, you can assume that it did not pay your portion of the FICA tax, and you remain responsible to pay it.

5. How do I get money back if I already filed my return?

You must file Form 1040X to receive a refund or credit toward any unpaid taxes. Generally, a refund is only possible if you initially calculated and paid SE Tax on the income or if your employer issued you a Form W-2 showing the employer paid your FICA tax. See question 11 for instructions on amending your return.

6. What if I reported my Form 1099-MISC income on Schedule C and claimed expenses?

Schedule C cannot be used to report your income since wages earned by an employee are reported on line 7 of Form 1040. You must file an amended return to reflect the correct amount of tax under your status as an employee. The change to employee status may increase your tax because you will now compute FICA tax on your gross wages instead of computing self-employment tax on the net income. Furthermore, any expenses you deducted from the income on Schedule C must now be deducted as miscellaneous itemized deductions on Schedule A, subject to a 2% limitation. Some of the expenses may no longer be deductible. Publication 529, *Miscellaneous Deductions*, will help you determine which expenses can be claimed on Schedule A.

Self-employed individuals are also allowed a deduction on Form 1040 in an amount equal to one-half of SE tax. As an employee, you are not entitled to this deduction and any other deductions you were allowed because you treated yourself as self-employed, such as the self-employed health insurance deduction and the deduction for contributions to a Keogh-type retirement plan. Your taxable income is affected by these changes, and as a result, the income tax due is adjusted. See question 8 for additional information.

7. What if I still have other unrelated business income to report on Schedule C?

If your Schedule C included income from a source unrelated to your determination as an employee, you remain responsible for SE tax on that income and should continue to report the income on Schedule C. File an amended return to make the changes described in Question 6 above, but also complete a new Schedule C that reports the unrelated business income and the expenses attributable to that income. You must also complete a new Schedule SE, *Self-Employment Tax*, to compute self-employment tax on the new net income. In addition, on page one of Form 1040X, you will need to adjust any deductions you may have taken for one-half of the self-employment tax, the Keogh retirement plan deduction, or the self-employed health insurance deduction as they relate to the remaining Schedule C income.

8. Will I get back all the Self Employment Tax I paid?

No. The amount of your refund or decrease in tax is affected by the changes you make on your amended return. These changes may include:

- A.** The amount of FICA tax you owe compared to the self-employment tax you originally computed.
- B.** Whether or not any of the business expenses you originally reported on Schedule C can be transferred to your Schedule A since you can no longer use Schedule C to report the income.
- C.** The removal of deductions you were entitled to as someone treated as a self-employed individual such as the one-half of SE

tax deduction, self-employment health insurance deduction, or a Keogh-type retirement plan deduction.

D. Changes (increase or decrease) to any tax or credit computed on your adjusted gross income such as the alternative minimum tax, earned income credit, or credit for child and dependent care expenses since some of the changes mentioned in A through C of this question affect your adjusted gross income and/or your taxable income.

9. What form do I use to calculate FICA tax?

Individuals whose employment status is in dispute or who have been determined to be employees by IRS can use Form 8919 to calculate FICA tax on the income that has been determined to be wages. Completion of Form 8919 will also ensure that you receive credit for this income with the SSA. You should attach it and a copy of the determination letter to your original return or amended return.

10. What if I'm getting bills for my taxes that will be affected by my new status as an employee?

The IRS will continue to send bills until you file an amended return or until you pay the amount due. When your amended return has been processed, your tax and any interest or penalty charges will be changed as appropriate. The determination of your work status will not stop the billing process or change your tax due until you correct or file your Form 1040. File your Form 1040X, and Form 8919, and a copy of your determination letter (or other documentation showing you were determined to be an employee), with the Campus specified in the Form 1040X instructions. Also, please inform the IRS office that has been sending you bills that you have filed the amended return. If you are on an installment payment plan, you should continue making payments until your amended return has been processed and you have been notified by IRS whether there is any balance due.

11. How do I amend my tax return?

To complete your amended return, you will need a copy of your original return and a copy of any amendments made since you originally filed your return. If amendments have been made, you should use these figures instead of the figures from your original return. Use these figures in column A of your Form 1040X. In Column C of your Form 1040X, fill in the correct information to reflect your status determination as an employee. To arrive at these figures you may find it helpful to complete a new Form 1040.

If you are recalculating your taxes on a new Form 1040, report the full amount of the 1099-MISC income as wages on line 7 and compute the employee portion of FICA tax using Form 8919. If you deducted expenses against this income on your Schedule C when you originally filed, you may be able to move the expenses to Schedule A if they meet the employee business expense criteria. Report these expenses on Form 2106, *Employee Business Expenses, as miscellaneous deductions* on Schedule A (see question 6 above). Please note that you can take the standard deduction instead of using Schedule A, if it is to your advantage (the standard deduction may be higher than your Schedule A deductions).

Column B of the Form 1040X is the difference (increase or decrease) between columns A and C. If you are moving expenses from Schedule C to Schedule A, be sure to attach your Schedule A and Form 2106 to your amended return. If you must calculate your share of FICA tax, please also attach Form 8919.

12. How do I get return forms?

You can easily find and download the forms you need by searching our web site, www.irs.gov, or by calling IRS toll-free at 1-800 TAX-FORM (1-800 829-3676).

13. Where should I send my return(s) or amended return(s)?

You should send your tax return(s) or your amended return(s) to the IRS Campus where you normally file your returns. The instructions to Form 1040 or Form 1040X will provide you with the address.

14. What if I did not receive a reporting form from my employer to assist with the amendment process?

If you did not receive a reporting form such as Form W-2 from your employer, or the amount on the reporting form you received was incorrect and you have not been successful in obtaining a correct one from your employer, you may complete Form 4852, *Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* and use it as a substitute for Form W-2 to send with your return(s). Estimate your income as accurately as possible if you do not have evidence of the actual amounts paid to you. If you have proof that the employer withheld taxes from this income, you should include that on Form 4852 and attach the proof to the form before you mail it in. You may also contact IRS Customer Service at 1-800-829-1040. An IRS representative can assist you by contacting the employer on your behalf. The letter that the employer receives will advise him or her of the employer's responsibilities to provide a correct reporting form and the penalties for failure to do so. The representative will send you Form 4852 for completion (as discussed above) so you can attach it to your return(s).

15. What if I filed the request for a determination as a result of contact from the IRS Automated Under-Reporter (AUR) Operation?

If you requested the SS-8 determination to assist you in responding to an inquiry from the IRS Automated Under-Reporter (AUR) operation, you should submit the results of the SS-8 Program determination to AUR for consideration. Even if your case with AUR is closed, it can reconsider the outcome using the new information. This could result in an adjustment to your tax liability.

To get a reconsideration of the case, please send a letter to the unit (at the address previously provided to you by AUR) requesting a reconsideration. Please attach copies of the Notice CP2000 and the SS-8 determination to your request.

16. What if I filed the request for a determination as a result of an audit on my tax return?

If you requested this determination to address a self-employment tax deficiency matter brought to your attention through an IRS audit of your Form 1040, you should submit the results of the determination to the examiner for his or her consideration. Even if the audit is closed, the examiner can reconsider the outcome using the new information. This could result in an adjustment to your tax liability.

To have an examiner reconsider the audit case, please send a letter to the address provided to you by the examiner and request a reconsideration.

17. What are the benefits of correcting my returns to reflect my status as an employee?

By taking the initiative to correct your account, if necessary, you may be able to reduce or avoid any otherwise applicable interest or penalty charges on any additional tax due or you may receive a refund of any overpayment of tax. Additionally, if you did not initially pay FICA or self-employment tax on the income, paying it now will ensure that you get credit for the income with SSA.

18. What if I have more questions?

You can search our web site, www.irs.gov, or you can call IRS toll-free at 1-800 TAX-FORM (1-800 829-3676).