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than one plan of an employer, the plan administrator or payor may, but need not, aggregate distributions for purposes of determining whether the $200 floor is reached. However, once the $200 threshold has been reached, the sum of all payments during the year must be used to determine the applicable amount to be withheld from subsequent payments during the year.

Q–15: If eligible rollover distributions are made from a qualified plan, who has responsibility for making the returns and reports required under these regulations?

A–15: Generally, the plan administrator, as defined in section 414(g), is responsible for maintaining the records and making the required reports with respect to eligible rollover distributions from qualified plans. However, if the plan administrator fails to keep the required records and make the required reports, the employer maintaining the plan is responsible for the reports and returns.

Q–16: What eligible rollover distributions must be reported on Form 1099–R?

A–16: Each eligible rollover distribution, including each eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover, must be reported on Form 1099–R in accordance with the instructions for Form 1099–R. For purposes of the reporting required under section 6047(e), a direct rollover is treated as a distribution that is immediately rolled over to an eligible retirement plan. Distributions that are not eligible rollover distributions are subject to the reporting requirements set forth in §35.3405–1 of this chapter and applicable forms and instructions.

Q–17: Must the plan administrator, trustee or custodian of the eligible retirement plan report amounts received in a direct rollover?

A–17: (a) *Individual retirement plan.* If a distributee elects to have an eligible rollover distribution paid to an individual retirement plan in a direct rollover, the eligible rollover distribution is reported on Form 5498 as a rollover contribution to the individual retirement plan, in accordance with the instructions for Form 5498.

(b) *Qualified plan or section 403(b) annuity.* If a distributee elects to have an eligible rollover distribution paid to a qualified plan or section 403(b) annuity, the recipient plan or annuity is not required to report the receipt of the rollover contribution.

[T.D. 8619, 60 FR 49215, Sept. 22, 1995]

§ 31.3406–0 Outline of the backup withholding regulations.

This section lists paragraphs contained in §§31.3406(a)–1 through 31.3406(i)–1.

§31.3406(a)–1 Backup withholding requirement on reportable payments.

(a) Overview.
(b) Conditions that invoke the backup withholding requirement.
(1) Conditions applicable to all reportable payments.
(2) Conditions applicable only to reportable interest or dividend payments.
(c) Exceptions.
(d) Cross references.

§31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) In general.
(b) Middlemen treated as payors.
(c) Persons not treated as payors.

§31.3406(a)–3 Scope and extent of accounts subject to backup withholding.

§31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) Timing.
(1) In general.
(2) Special rules for dividends.
(b) Amounts reportable under section 6045.
(1) In general.
(2) Special rule for interest accrued on bonds.
(c) Middlemen.
(1) In general.
(2) Special rule for common trust funds.
(3) Special rule for certain grantor trusts.

§31.3406(b)(2)–1 Reportable interest payment.

(a) Interest subject to backup withholding.
(1) In general.
(2) Special rule for tax-exempt interest.
(b) Amount subject to backup withholding.
(1) In general.
(2) Special rule to adjust for premature withdrawal penalty.

§31.3406(b)(2)–2 Original issue discount.

(a) Original issue discount subject to backup withholding.
(b) Amount subject to backup withholding and time when backup withholding is imposed with respect to short-term obligations.
(c) Transferred short-term obligations.
(1) Subsequent holder may establish purchase price.
(2) Subsequent holder unable (or not permitted) to establish purchase price.
(3) Transferred obligation.
(d) Amount subject to backup withholding and time when backup withholding is imposed with respect to long-term obligations.
(1) No cash payments prior to maturity.
(2) Registered long-term obligations with cash payments prior to maturity.
(3) Transferred registered long-term obligations with payments prior to maturity.

(e) Bearer long-term obligations.
(1) Payments prior to maturity.
(2) Payments at maturity.

§ 31.3406(b)(2)–3 Window transactions.

(a) Requirement to backup withhold.
(b) Window transaction defined.
(c) Manner of furnishing taxpayer identification number in the case of a window transaction.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) Dividends subject to backup withholding.
(b) Dividends not subject to backup withholding.
(c) Amount subject to backup withholding.
(1) In general.
(2) Reasonable estimate of amount of dividend subject to backup withholding.
(3) Reinvested dividends.

§ 31.3406(b)(2)–5 Reportable patronage dividend payment.

(a) Patronage dividends subject to backup withholding.
(b) Amount subject to backup withholding.
(1) Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.
(2) Notified payee underreporting or payee certification failure.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) Section 6041 and 6041A(a) payments subject to backup withholding.
(b) Amount subject to backup withholding.
(1) In general.
(2) Net commissions.
(3) Payments aggregating $600 or more for the calendar year.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) Transactions subject to backup withholding.
(b) Amount subject to backup withholding.
(1) In general.
(2) Forward contracts, including foreign currency contracts, and regulated futures contracts.
(3) Security sales made through a margin account.
(4) Security short sales.
(5) Fractional shares.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) Payments subject to backup withholding.
(b) Amount subject to backup withholding.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) Royalty payments subject to backup withholding.
(b) Amount subject to backup withholding.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) In general.
(b) Manner of making the election.
(c) How to annualize.
(1) In general.
(2) Special aggregation rule for reportable interest and dividends.
(d) Exception for window transactions and original issue discount.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) Overview.
(b) Definitions.
(1) Notified payee underreporting.
(2) Payee underreporting.
(c) Notice to payors regarding backup withholding due to notified payee underreporting.
(1) In general.
(2) Additional requirements for payors that are also brokers.
(3) Payor identification of accounts of the payee subject to backup withholding due to notified payee underreporting.
(d) Notice from payors of backup withholding due to notified payee underreporting.
(1) In general.
(2) Procedures.
(e) Period during which backup withholding is required.
(1) In general.
(2) Stop withholding.
(3) Dormant accounts.
(f) Notice to payees from the Internal Revenue Service.
(1) Notice period.
(2) Payee subject to backup withholding.
(3) Disclosure of names of payors and brokers.
(4) Backup withholding certification.
(g) Determination by the Internal Revenue Service that backup withholding should not start or should be stopped.
(1) In general.
(2) Date notice to stop backup withholding will be provided.
(3) Grounds for determination.
(4) No underreporting.
(5) Correcting any payee underreporting.
(6) Undue hardship.
(7) Bona fide dispute.
(h) Payees filing a joint return.
(1) In general.
(2) Exceptions.
(i) [Reserved.]
(j) Penalties.

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) Requirement to backup withhold.
(b) Reportable interest or dividend account.
(1) Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.
(2) Determination of pre-1984 account or instrument.
(3) Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.
(4) Special rule with respect to the acquisition of a readily tradable instrument in a transaction between certain parties acting without the assistance of a broker.
(c) Brokerage account.
(1) Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account.
(2) Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account.
(d) Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.—Manner required for furnishing a taxpayer identification number.

§ 31.3406(d)–2 Payee certification failure.

(a) Requirement to backup withhold.
(b) Exceptions.

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) Accounts or readily tradable instruments acquired directly from the payor (including a broker who holds an instrument in street name) by electronic transmission or by mail.
(b) Sale of an instrument for a customer by electronic transmission or by mail.
(c) Application to foreign payees.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) Readily tradable instruments acquired through post-1983 brokerage accounts with a broker who is not a payor.
(1) In general.
(2) Additional requirements.
(3) Transactions entered into through a brokerage account that is not a post-1983 brokerage account.
(4) Payor must notify payee.
(b) Notices.
(1) Form of notice by broker to payor.
(2) Form of notice by payor to payee.
(c) Payor's reliance on information from broker.
(1) In general.
(2) Amount subject to backup withholding.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) Overview.
(b) Definitions and special rules.
(1) Definition of an incorrect name/TIN combination.
(2) Definition of account.
(3) Definition of business day.
(4) Certain exceptions.
(c) Notice regarding an incorrect name/TIN combination.
(1) In general.
(2) Additional requirements for payors that are also brokers.
(3) Payor identification of the account or accounts of the payee that have the incorrect taxpayer identification number.
(4) Special rule for joint accounts.
(5) Date of receipt.
(d) Notice from payors of backup withholding due to an incorrect name/TIN combination.
(1) In general.
(2) Procedures.
(e) Period during which backup withholding is required due to notification of an incorrect name/TIN combination.
(1) In general.
(2) Grace periods.
(3) Dormant accounts.
(f) Manner required for payee to furnish certified taxpayer identification number.
(g) Receipt of two notices within a 3-year period.
(1) In general.
(2) Notice to payee who has provided two incorrect name/TIN combinations within 3 calendar years.
(3) Period during which backup withholding is required due to a second notice of an incorrect name/TIN combination within 3 calendar years.
(4) Receipt of two notices in one calendar year.
(5) Notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination.
(h) Payors must use newly provided certified number.
(i) Effective date.
(j) Examples.

§ 31.3406(e)–1 Period during which backup withholding is required.

(a) In general.
(b) Failure to furnish a taxpayer identification number in the manner required.
(1) Start withholding.
(2) Stop withholding.
(c) Notification of an incorrect taxpayer identification number.
(d) Notified payee underreporting.
(e) Payee certification failure.
(1) Start withholding.

(2) Stop withholding.
(f) Rule for determining when the payor receives a taxpayer identification number or certificate from a payee.

§31.3406(f)–1 Confidentiality of information.

(a) Confidentiality and liability for violation.
(b) Permissible use of information.
(1) In general.
(2) Window transactions.
(c) Specific restrictions on the use of information.

§31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) Exempt recipients.
(1) In general.
(2) Nonexclusive list.
(b) Determination of whether a person is described in paragraph (a)(1) of this section.
(c) Prepaid or advance premium life-insurance contracts.

§31.3406(g)–2 Exception for reportable payments for which backup withholding is otherwise required.

(a) In general.
(b) Payment of wages.
(c) Distribution from a pension, annuity, or other plan of deferred compensation.
(d) Gambling winnings.
(1) In general.
(2) Definition of a reportable gambling winning and determination of amount subject to backup withholding.
(3) Special rules.
(e) Certain real estate transactions.
(f) Certain payments after an acquisition of accounts or instruments.
(g) Certain gross proceeds.

§31.3406(g)–3 Exemption while payee is waiting for a taxpayer identification number.

(a) In general.
(1) Backup withholding not required for 60 days.
(2) Reserve method.
(3) Alternative rule; 7-day grace period.
(b) Special rule for readily tradable instruments.
(c) Exceptions.
(1) In general.
(2) Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.
(d) Awaiting-TIN certificate.
(e) Form for awaiting-TIN certificate.

§31.3406(h)–1 Definitions.

(a) In general.
(b) Taxpayer identification number.
(1) In general.
(2) Obviously incorrect number.
(c) Broker.
(d) Readily tradable instrument.
(e) Day.
(f) Business day.

§31.3406(h)–2 Special rules.

(a) Joint accounts.
(1) Relevant name and taxpayer identification number combination.
(2) Optional rule for accounts subject to backup withholding under section 3406(a)(1)(B) or (C) where the names are switched.
(3) Joint foreign payees.
(b) Backup withholding from an alternative source.
(1) In general.
(2) Exceptions for payments made in property.
(c) Trusts.
(d) Adjustment of prior withholding by middleman.
(e) Conversion of amounts paid in foreign currency into United States dollars.
(1) Convertible foreign currency.
(2) Nonconvertible foreign currency. [Reserved]
(f) Coordination with other sections.
(g) Tax liabilities and penalties.
(h) To whom payor is liable for amount withheld.

§31.3406(h)–3 Certificates.

(a) Prescribed form to furnish information under penalties of perjury.
(1) In general.
(2) Use of a single or multiple Forms W–9 for accounts of the same payee.
(b) Prescribed form to furnish a noncertified taxpayer identification number.
(c) Forms prepared by payors or brokers.
(1) Substitute forms; in general.
(2) Form for exempt recipient.
(d) Special rule for brokers.
(e) Reasonable reliance on certificate.
(1) In general.
(2) Circumstances establishing reasonable reliance.
(f) Who may sign certificate.
(1) In general.
(2) Notified payee underreporting.
(g) Retention of certificates.
(1) Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.
(2) Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.
(h) Cross references.

§31.3406(i)–1 Effective date.

[T.D. 8637, 60 FR 66112, Dec. 21, 1995, as amended by T.D. 8734, 62 FR 53493, Oct. 14, 1997]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53493, Oct. 14, 1997, §31.3406–0 was amended by removing the entries in the table for

§ 31.3406(h)–2, paragraphs (e)(1) and (e)(2), effective Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001.

§ 31.3406(a)–1 Backup withholding requirement on reportable payments.

(a) *Overview.* Under section 3406, a payor must deduct and withhold 31 percent of a reportable payment if a condition for withholding exists. *Reportable payments* mean interest and dividend payments (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)). The conditions described in paragraph (b)(1) of this section apply to all reportable payments, including reportable interest and dividend payments. The conditions described in paragraph (b)(2) of this section apply only to reportable interest and dividend payments.

(b) *Conditions that invoke the backup withholding requirement*—(1) *Conditions applicable to all reportable payments.* A payor of a reportable payment must deduct and withhold under section 3406 if—

(i) The payee of the reportable payment does not furnish the payee's taxpayer identification number to the payor, as required in section 3406(a)(1)(A) and § 31.3406(d)–1; or

(ii) The Internal Revenue Service or a broker notifies the payor that the taxpayer identification number furnished by its payee for a reportable payment is incorrect, as described in section 3406(a)(1)(B) and § 31.3406(d)–5.

(2) *Conditions applicable only to reportable interest or dividend payments.* A payor of a reportable interest or dividend payment must deduct and withhold under section 3406 if—

(i) The Internal Revenue Service or a broker notifies the payor that its payee has underreported interest or dividend income, as described in section 3406(a)(1)(C) and § 31.3406(c)–1; or

(ii) The payee fails to certify to the payor or broker that the payee is not subject to withholding due to notified payee underreporting, as described in section 3406(a)(1)(D) and § 31.3406(d)–2.

(c) *Exceptions.* The requirement to withhold does not apply to certain minimal payments as described in § 31.3406(b)(4)–1 or to payments exempt from withholding under §§ 31.3406(g)–1 through 31.3406(g)–3.

(d) *Cross references.* For the definition of *payor,* see § 31.3406(a)–2. For the definition of *taxpayer identification number,* see § 31.3406(h)–1(b).

[T.D. 8637, 60 FR 66114, Dec. 21, 1995]

§ 31.3406(a)–2 Definition of payors obligated to backup withhold.

(a) *In general. Payor* means any person who is required to make an information return with respect to any reportable payment (as described in section 3406(b)) under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N, including any middleman as described in paragraph (b) of this section.

(b) *Middlemen treated as payors.* A person who receives or collects a reportable payment on behalf of or for the account of a payee is a middleman and is treated as the payor of the payment. These persons include, but are not limited to—

(1) A custodian of a payee's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(2) A nominee, including the joint owner of an account or instrument, except if the joint owners are husband and wife or if the payment is actually owned by another person whose name is also shown on the information return filed with respect to the payment;

(3) A broker holding a security (including stock) for a customer in street name;

(4) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors, and for this purpose spouses filing a joint return are considered to be one grantor;

(5) A common trust fund; and

(6) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* The following persons are not treated as payors for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates:

(1) An agent of the payor who is acting on behalf of the payor in making the payment and who has not entered into an agreement with the payor (for further guidance see Rev. Proc. 84–33