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§ 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