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furnish the payee's taxpayer identification number to the broker and certify under penalties of perjury that the taxpayer identification number furnished is correct, except as provided in §31.3406(d)–3(b).

(ii) *Definition of a post-1983 brokerage account.* A brokerage account established after December 31, 1983 (or before January 1, 1984, through which during 1983 the broker neither bought nor sold securities nor held securities on behalf of the payee as a nominee (i.e., in street name)), is a post-1983 brokerage account.

(d) *Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.—Manner required for furnishing a taxpayer identification number.* For accounts, contracts, or relationships subject to information reporting under section 6041 (relating to information reporting at source on rents, royalties, salaries, etc.), section 6041A(a) (relating to information reporting of payments for nonemployee services), section 6050A (relating to information reporting by certain fishing boat operators), or section 6050N (relating to information reporting of payments of royalties), the payee must furnish the payee's taxpayer identification number to the payor either orally or in writing. Except as provided in §31.3406(d)–5, the payee is not required to certify under penalties of perjury that the taxpayer identification number is correct regardless of when the account, contract, or relationship is established.

[T.D. 8637, 60 FR 66123, Dec. 21, 1995]

### §31.3406(d)–2 Payee certification failure.

(a) *Requirement to backup withhold.* Withholding under section 3406(a)(1)(D) applies to a reportable interest or dividend payment (as defined in section 3406(b)(2)) if, and only if, the payee fails to certify to the payor, under penalties of perjury, that the payee is not subject to withholding due to notified payee underreporting under section 3406(a)(1)(C). The period for which withholding applies is described in §31.3406(e)–1(e). See §31.3406(d)–3(a) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by electronic transmission or by mail. See §31.3406(c)–1(c)(3)(iv) for rules with respect to a payor's reliance on a payee certification for a new account following notified payee underreporting. See §31.3406(d)–4 for special rules relating to the acquisition of a readily tradable instrument through a broker. The certificate on which the certification should be made is described in §31.3406(h)–3.

(b) *Exceptions.* Withholding under section 3406(a)(1)(D) and paragraph (a) of this section does not apply to reportable interest or dividend payments (as defined in section 3406(b)(2)) made—

(1) With respect to a pre-1984 account (as defined in §31.3406(d)–1(b)(1));

(2) In a window transaction (as defined in §31.3406(b)(2)–3(b));

(3) With respect to a readily tradable instrument described in §31.3406(d)–1(b)(2)(iv) or §31.3406(d)–4(a)(3); or

(4) During the period and with respect to an account or readily tradable instrument described in §31.3406(d)–3.

[T.D. 8637, 60 FR 66125, Dec. 21, 1995]

### §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.* In the case of an account established directly with, or a readily tradable instrument acquired directly from, the payor by means of electronic transmission (i.e., telephone or wire instruction) or by mail, the payor may permit the payee to furnish the certifications required in §31.3406(d)–1(b)(3) (relating to certification that the payee's taxpayer identification number is correct) and §31.3406(d)–2 (relating to certification of notified payee underreporting) within 30 days after the establishment or acquisition without subjecting the account to withholding during the 30 days. The preceding sentence applies only if the payee furnishes a taxpayer identification number to the payor at the time of the establishment or acquisition, and the payee does not withdraw more than 69 percent of a reportable interest or dividend payment before the certifications are received within the 30 days. If the payee does not provide the required certifications

within 30 days of the establishment or acquisition, the payor must withhold 31 percent of any reportable interest or dividend payments made to the account after its acquisition. For purposes of this section, an account or instrument is considered acquired directly from the payor if the instrument was acquired by the payee without the assistance of a broker or the instrument was acquired directly from a broker who holds the instrument as nominee for the payee (i.e., in street name) and who is considered a payor under §31.3406(a)–2. For payments made after December 31, 1998, see §1.6049–5(d)(2)(ii) of this chapter for the application of a 90-day grace period in lieu of the 30-day grace period described in this paragraph (a) if, at the beginning of the 90-day grace period, certain conditions are satisfied. If the grace period provisions of §1.6049–5(d)(2)(ii) or §1.1441–1(b)(3)(iv) of this chapter are applied with respect to a new account, the grace period provisions of this paragraph (a) shall not apply to that account.

(b) *Sale of an instrument for a customer by electronic transmission or by mail.* The special rules set forth in paragraph (a) of this section apply comparably with respect to certification of the taxpayer identification number for the sale of an instrument under section 6045 (as described in §31.3406(b)(3)–2) through a post-1983 brokerage account (as described in §31.3406(d)–1(c)(2)) for a customer by electronic transmission or by mail. However, the 30-day rules may apply only if the payee furnishes the payee's taxpayer identification number before the sale occurs. For purposes of applying the 30-day rules under this paragraph (b), a payee's reinvestment of the gross proceeds of the sale into other instruments constitutes a withdrawal.

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 (or an acceptable substitute) or other evidence of foreign status (pursuant to relevant regulations under an applicable Internal Revenue Code section without regard to the requirement to furnish a taxpayer identifying number, and the certifications described in §§31.3406(d)–1(b)(3) and 31.3406(d)–2), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident. The 30-day rules described in paragraph (a) or (b) of this section may apply only if the payee does not qualify for, or the payor does not apply, the 90-day grace period described in §1.6049–5(d)(2)(ii) or §1.1441–1(b)(3)(iv) of this chapter.

[T.D. 8637, 60 FR 66125, 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(d)–3 was amended by adding two sentences at the end of paragraph (a); removing the words ''30-day'' in the first sentence, revising the word ''these'' to ''the 30-day'', and adding the word ''may'' immediately before the words ''apply only if'' in the second sentence; revising the word ''those'' to ''the'' in the third sentence in paragraph (b); and by revising paragraph (c), 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. For the convenience of the user, the superseded text is set forth as follows:

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

(a) * * *

(b) * * * The special 30-day rules set forth in paragraph (a) of this section apply comparably with respect to certification of the taxpayer identification number for the sale of an instrument under section 6045 (as described in §31.3406(b)(3)–2) through a post-1983 brokerage account (as described in §31.3406(d)–1(c)(2)) for a customer by electronic transmission or by mail. However, these rules apply only if the payee furnishes the payee's taxpayer identification number before the sale occurs. For purposes of applying those 30-day rules under this paragraph (b), a payee's reinvestment of the gross proceeds of the sale into other instruments constitutes a withdrawal.

(c) *Application to foreign payees.* The rules of paragraphs (a) and (b) of this section also apply to a payee from whom the payor is required to obtain a Form W–8 or a substitute of the form or is to obtain other evidence of foreign status (pursuant to the relevant regulations issued under sections 6049 and 6045), provided the payee represents orally or otherwise, before or at the time of the acquisition or sale of the instrument or the establishment of the account, that the payee is not a United States citizen or resident.