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due to notified payee underreporting, see §31.3406(c)–1(d)(2).

(c) *Payor's reliance on information from broker*—(1) *In general.* A payor of an instrument acquired by a payee through a broker may rely on the information that the payor receives from the broker pursuant to paragraphs (a) and (b) of this section.

(2) *Amount subject to backup withholding.* The payor is required to withhold under section 3406 depending on the payor's customary method of making payment on an instrument or instruments owned by a payee. If it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if only certain of those instruments are subject to withholding, the payor must withhold on the aggregate payment made with respect to all the instruments in the account. Otherwise, the payor must withhold on the payment made on the instrument or instruments with respect to which the payee is subject to withholding.

[T.D. 8637, 60 FR 66125, Dec. 21, 1995; 61 FR 11307, Mar. 20, 1996; 61 FR 12135, Mar. 25, 1996]

§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.* Backup withholding under section 3406(a)(1)(B) applies to any reportable payment made with respect to an account of a payee if the Internal Revenue Service or a broker notifies a payor under paragraph (c)(1) or (2) of this section that the payee's name and taxpayer identification number combination (name/TIN combination) is incorrect and the payor is required under paragraph (c)(3) of this section to identify that account as having the same name/TIN combination. After receiving a notice from the Internal Revenue Service or a broker under paragraph (c)(1) or (2) of this section and identifying an account as having the incorrect name/TIN combination under paragraph (c)(3) of this section, the payor must notify the payee in accordance with paragraph (d) of this section. In addition, under paragraph (e) of this section, the payor must backup withhold on all reportable payments made to such account after the close of the 30th business day after the date that the payor receives the notice and on or before the close of the 30th calendar day after the date that the payor receives from the payee the certification required under paragraph (f) of this section. Under paragraph (g) of this section, if a payor receives 2 notices from the Internal Revenue Service or broker within 3 calendar years with respect to a payee's account, the payor must notify the payee in accordance with paragraph (g)(2) (rather than paragraph (d)) of this section. In addition, the payor must backup withhold on all reportable payments made with respect to the account after the close of the 30th business day after the date that the payor receives the second notice and on or before the 30th calendar day after the date that the payor receives notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination for the account. Paragraph (h) of this section requires a payor to use a corrected name/TIN combination on subsequent information returns.

(b) *Definitions and special rules.*—(1) *Definition of incorrect name/TIN combination.* An incorrect name/TIN combination is a combination of a name and taxpayer identification number provided on an information return with respect to which the Internal Revenue Service determines that the taxpayer identification number provided is not assigned under section 6109 to the name provided.

(2) *Definition of account.* The term ''account'' means any account, instrument, or other relationship with the payor.

(3) *Definition of business day.* The term ''business day'' means any day other than a Saturday, Sunday, or legal holiday (within the meaning of section 7503).

(4) *Certain exceptions*—(i) *In general.* This section does not apply with respect to any notice received under paragraph (c)(1) or (2) of this section with respect to payments that—

(A) Were made to a fiduciary or nominee account; or

(B) Were not reportable payments (for example, because the payments were made to an exempt recipient).

See § 301.6724–1(f)(3) of this chapter for certain solicitation rules applicable after receipt of a notice under paragraph (c)(1) or (2) of this section with respect to a fiduciary or nominee account.

(ii) *Definition of fiduciary or nominee account.* A fiduciary or nominee account is an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or as administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law.

(c) *Notice regarding an incorrect name/TIN combination*—(1) *In general.* If the Internal Revenue Service notifies a payor that a payee's name/TIN combination is incorrect and that the payor must commence backup withholding as required on reportable payments made with respect to accounts of the payee with the same name/TIN combination, the payor must—

(i) Identify under paragraph (c)(3) of this section any account or accounts of the payee having the same name/TIN combination;

(ii) Except as provided in paragraph (g) of this section, notify the payee and backup withhold on reportable payments made to the account or accounts under the rules of paragraphs (d), (e), and (f) of this section.

This paragraph (c)(1) also applies if the payor receives notice from a broker under paragraph (c)(2) of this section.

(2) *Additional requirements for payors that are also brokers*—(i) *In general.* A broker must notify the payor of an instrument of the information required under paragraph (c)(2)(ii) of this section, if—

(A) The broker (in its capacity as a payor) receives a notice from the Internal Revenue Service under paragraph (c)(1) of this section that a payee's name/TIN combination is incorrect and is required to identify an account of the payee pursuant to paragraph (c)(3) of this section as having the name/TIN combination;

(B) The payee acquires through the same account with the broker a readily tradable instrument with respect to which the broker is not the payor; and

(C) The acquisition of such instrument occurs after the close of the 30th business day after the date that the broker receives that notice (or on any earlier date that the broker chooses to begin applying this paragraph (c)(2)).

For purposes of this paragraph (c)(2)(i), with respect to notices under paragraph (c)(1) of this section received on or after September 1, 1992, an acquisition includes a transfer of an instrument out of street name into the name of the registered owner, *i.e.*, the payee.

(ii) *Required information.* The information required to be provided under this paragraph (c)(2)(ii) is:

(A) The fact that the broker was notified by the Internal Revenue Service that the payee furnished an incorrect name/TIN combination;

(B) The incorrect name/TIN combination; and

(C) The fact that the named payee is subject to backup withholding under section 3406(a)(1)(B).

The broker is required to provide this information to the payor of the instrument in connection with the transfer instructions for the acquisition.

(iii) *Termination of obligation to provide information.* The obligation of a broker to provide information to payors under this paragraph (c)(2) terminates simultaneously with the termination of the broker's obligation to backup withhold (in its capacity as payor) on reportable payments to the account.

(3) *Payor identification of the account or accounts of the payee that have the incorrect taxpayer identification number*—(i) *In general.* If an account number or designation is provided in the notice received under paragraph (c)(1) of this section, the payor need only identify any account or accounts corresponding to that number or designation that has the same name/TIN combination provided in the notice. If no account number or designation is provided in the notice received under paragraph (c)(1) of this section, the payor must identify, using reasonable care, all accounts of the payee having the same name/TIN combination provided in the

notice. If a payor receives notice from a broker under paragraph (c)(2) of this section with respect to the acquisition of a readily tradable instrument, the payor is not required to identify any other account of the payee.

(ii) *Reasonable care where no account number or designation is provided.* A payor who satisfies the following two-part facts-and-circumstances test will be considered to have exercised reasonable care for purposes of this paragraph (c)(3).

(A) Part one of the test is satisfied if a payor searches for accounts of the payee on the computer or other recordkeeping system that the payor can reasonably associate with the information return that generated the notice under paragraph (c)(1) of this section. For example, a payor who maintains separate computer or recordkeeping systems for different product lines will have identified and used the appropriate system if the payor searches for accounts of the payee on the computer or recordkeeping system that contains the product line for the type of payments reported on the information return. A payor with the same product line on several nonintegrated computer or record systems will have identified and used the appropriate system if the payor searches for accounts of the payee on any computer or record system that the payor otherwise can reasonably associate with the information return.

(B) Part two of the test is satisfied if the payor inputs the name/TIN combination provided on the notice from the Internal Revenue Service under paragraph (c)(1) of this section into the system that is described in paragraph (c)(3)(ii)(A) of this section. If the system of a payor cannot utilize the name/TIN combination, the payor must input appropriate data or criteria, as determined by the capability of the payor's computer or recordkeeping system.

(iii) *No identification if error is caused by payor.* A payor may treat an account as not having the incorrect name/TIN combination if the error resulted because the name or taxpayer identification number on such account is not the name or taxpayer identification number that was provided to the payor. This may occur, for example, where a payor transposes numbers in the taxpayer identification number when incorporating it into the payor's business records.

(4) *Special rules for joint accounts*—(i) *In general.* In the case of a joint account, the relevant name/TIN combination for purposes of this section is the name/TIN combination used for information reporting purposes.

(ii) *Transitional rule.* With respect to notices received under paragraph (c) (1) or (2) of this section prior to September 1, 1993, a payor may treat the name/TIN combination of the first person on a joint account as the relevant name/TIN combination, unless that person is an exempt foreign person and the account registration includes names of persons who are not foreign persons.

(iii) *Optional rule where names are switched.* A payor may backup withhold under this section on reportable payments made to a joint account if the order of the names (or taxpayer identification numbers) on the account is merely changed subsequent to receipt of a notice under paragraph (c) (1) or (2) of this section, provided that the name of the person to which the incorrect name/TIN combination originally applies remains on the account.

(5) *Date of receipt.* For purposes of this section, the date set forth on the notice from the Internal Revenue Service or broker under paragraph (c) (1) or (2) of this section is considered to be the date of receipt of the notice by the payor. However, if the payor demonstrates to the satisfaction of the Internal Revenue Service that the date of actual receipt of the notice is later than the date on the notice, the actual date of receipt is controlling.

(d) *Notice from payors of backup withholding due to an incorrect name/TIN combination*—(1) *In general.* Except as provided in paragraph (g) of this section, if a payor receives notice under paragraph (c)(1) or (2) of this section and is required to identify an account as having the incorrect name/TIN combination under paragraph (c)(3) of this section, the payor must send a copy of the notice (or an acceptable substitute notice) to the payee of the account in accordance with the procedures of paragraph (d)(2) of this section.

(2) *Procedures*—(i) *In general.* The notice that a payor must send to a payee under paragraph (d)(1) of this section must comply with such procedural requirements as the Internal Revenue Service provides in the Internal Revenue Bulletin such as to form and manner of delivery. A payor must send the notice to the payee within 15 business days after the date that the payor receives the notice from the Internal Revenue Service or a broker under paragraph (c)(1) or (2) of this section.

(ii) *Two or more notices for an account in the same calendar year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section in a calendar year with respect to the same account of a payee need only send one notice to the payee under this section.

(e) *Period during which backup withholding is required due to notification of an incorrect name/TIN combination*—(1) *In general.* Except as provided in paragraph (g) of this section, if a payor receives a notice under paragraph (c)(1) or (2) of this section and is required to identify an account as having the same name/TIN combination under paragraph (c)(3) of this section, the payor must impose backup withholding on all reportable payments made with respect to the account after the close of the 30th business day after the date the payor receives that notice and on or before the close of the 30th calendar day after the day the payor receives from the payee the certification required under paragraph (f) of this section.

(2) *Grace periods*—(i) *Starting backup withholding.* A payor may, on an account-by-account basis or in general, choose to begin backup withholding under this paragraph (e) at any time during the 30-business-day period described in paragraph (e)(1) of this section.

(ii) *Stopping backup withholding.* A payor may, on an account-by-account basis or in general, choose to stop backup withholding under this paragraph (e) at any time within 30 calendar days after the payor receives from the payee the certification required under paragraph (f) of this section.

(3) *Dormant accounts.* The requirement that a payor backup withhold under this paragraph (e) on reportable payments made with respect to an account terminates no later than the close of the third calendar year ending after the later of—

(i) The date that the last reportable payment was made to that account; or

(ii) The date that the payor received the notice under paragraph (c)(1) or (2) of this section.

(f) *Manner required for payee to furnish certified taxpayer identification number.* (1) Except as provided in paragraph (g) of this section, in order to prevent backup withholding under paragraph (e) of this section from starting, or to stop it once it has begun, a payee with respect to whom the payor has been notified under paragraph (c)(1) or (2) that the payee's name/TIN combination is incorrect is required on Form W–9 (or an acceptable substitute form) to—

(i) Provide the payee's name and taxpayer identification number; and

(ii) Certify, under penalties of perjury, that the taxpayer identification number being provided is correct.

(2) The certification must be made even if the account is a pre-1984 account and even if the payment to the account is a reportable payment other than interest, dividends, patronage dividends, original issue discount, or proceeds of a sale of a security or commodity. In order to prevent backup withholding under paragraph (e) of this section from starting or to stop it once it has begun, a payee is not required to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C). With respect to notices received under paragraph (c)(1) or (2) of this section on or after September 1, 1993, the requirements of this paragraph (f) are not satisfied if a payee provides only an awaiting TIN certification. As a result, a payor must not fail to begin backup withholding under paragraph (e) of this section solely because the payee provided an awaiting TIN certification, or stop it once it has begun solely because the payee provided an awaiting TIN certification.

(g) *Receipt of two notices within a 3-year period*—(1) *In general.* If a payor receives notification under paragraph (c)(1) or (2) of this section twice within 3 calendar years, and in each case the payor is required to identify the same account as having the incorrect name/TIN combination, the payor must—

(i) Disregard any future certifications (described in paragraph (f) of this section) furnished by the payee with respect to the account until the payor receives notice from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination under paragraph (g)(5) of this section;

(ii) Send the notice described in paragraph (g)(2) of this section to the payee (and not the notice required under paragraph (d) of this section) within 15 business days after the date that the payor receives the second notice; and

(iii) Impose backup withholding on the account for the period described in paragraph (g)(3) of this section.

The payor must maintain sufficient records to determine whether the payor has received notices under paragraph (c) (1) or (2) of this section twice within 3 calendar years with respect to the same account.

(2) *Notice to payee who has provided two incorrect name/TIN combinations within 3 calendar years.* The notice to the payee required by paragraph (g)(1) of this section must comply with such procedural requirements as the Internal Revenue Service provides in the Internal Revenue Bulletin such as to form and manner of delivery.

(3) *Period during which backup withholding is required due to a second notice of an incorrect name/taxpayer identification combination within 3 calendar years*—(i) *In general.* If paragraph (g)(1) of this section applies, the payor must backup withhold on all reportable payments made with respect to the account of the payee after the close of the 30th business day after the date that the payor receives the second notice under paragraph (c) (1) or (2) of this section and on or before the close of the 30th calendar day after the date that the payor receives notice from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination under paragraph (g)(5) of this section for the account. However, a payor may choose not to commence backup withholding under this paragraph (g) until January 1, 1992.

(ii) *Grace periods*—(A) *Starting backup withholding.* A payor may, on an account-by-account basis or in general, choose to begin backup withholding under this paragraph (g) at any time during the 30-business-day period described in paragraph (g)(3)(i) of this section.

(B) *Stopping backup withholding.* A payor may, on an account-by-account basis or in general, choose to stop backup withholding under this paragraph (g) at any time within 30 calendar days after the date the payor receives notice from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination under paragraph (g)(5) of this section for the account.

(iii) *Dormant accounts.* The requirement that a payor backup withhold under this paragraph (g) on reportable payments made with respect to an account terminates no later than the close of the third calendar year ending after the later of—

(A) The date that the last reportable payment was made to that account; or

(B) The date that the payor received the second notice under paragraph (c) (1) or (2) of this section.

(4) *Receipt of two notices in one calendar year.* A payor must treat the receipt of two or more notices under paragraph (c) (1) or (2) of this section in a calendar year with respect to an account as the receipt of one notice for purposes of this paragraph (g). The preceding sentence applies only if the two or more notices are received under the same payor taxpayer identification number.

(5) *Notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination.* The Social Security Administration (or the Internal Revenue Service) will notify a payor after it validates a name/TIN combination that the payee provides for an account to which paragraph (g)(1) of this section applies. Notification from the Social Security Administration (or the Internal Revenue

Service) validating a name/TIN combination satisfies the requirements of this paragraph (g)(5) only if it complies with such procedural requirements as the Internal Revenue Service provides in the Internal Revenue Bulletin such as to form and manner of delivery. In order to obtain notification from the Social Security Administration (or the Internal Revenue Service) validating a name/TIN combination for an account, a payee who receives notice from a payor under paragraph (g)(2) of this section should follow such procedures as the Internal Revenue Service provides in the Internal Revenue Bulletin.

(h) *Payor must use newly provided certified number.* If a payor receives a certification under paragraph (f) of this section or a notification under paragraph (g)(5) of this section for an account, the payor must use the name/TIN combination provided on such certification or notification on information returns for the account for which the due date (without regard to extensions) is more than 30 calendar days after the date that the payor receives the certification or notification. A payor who uses that name/TIN combination on the first such information return satisfies the requirement of section 3406(h)(9) to provide this information to the Internal Revenue Service. If the payor is not required to file any information returns with respect to the account after the date that the payor receives the certification or notification, a payor is deemed to satisfy the requirements of section 3406(h)(9).

(i) *Effective date.* Except as otherwise provided in this section, the provisions of this section are effective with respect to notices received on or after September 1, 1990, under paragraph (c)(1) or (2) of this section.

(j) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example 1. D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O pays interest on the account at the end of each calendar month, and the account is a pre-1984 account. On October 1, 1990, the Internal Revenue Service notifies Bank O that the name/TIN combination provided by D is incorrect. O timely notifies D as required in paragraph (d)(1) of this section. O does not receive the certification required under paragraph (f) of this section from D. O is required to backup withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O). Therefore, O is not required to backup withhold on the reportable payment made on October 31, 1990, but is required to backup withhold on the reportable payment made on November 30, 1990. O is required to continue to backup withhold under section 3406(a)(1)(B) until O receives the certification required under paragraph (f) of this section from D (or, if earlier, until backup withholding terminates under paragraph (e)(3) of this section).

Example 2. Assume the same facts as in *Example 1* except that D furnishes a new taxpayer identification number to O on November 1, 1990, but does not certify, under penalties of perjury, that it is his correct taxpayer identification number as required under paragraph (f) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O), and before the date O receives the certification required under paragraph (f) of this section from D.

Example 3. Assume the same facts as in *Example 2* except that D provides O with the certification required under paragraph (f) of this section on November 10, 1990. D elects pursuant to paragraph (e)(2)(ii) of this section to treat the certification as received on November 20, 1990. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406(a)(1)(B) because O did not make any reportable payment to D after 30 business days after notification of an incorrect name/TIN combination and before O received D's certification under paragraph (f) of this section (or, if earlier, until backup withholding terminates under paragraph (e)(3) of this section).

Example 4. Individual F has two post-1983 accounts with Bank R that pay reportable interest: a savings account and a money market account. The money market account was opened in 1986, and the savings account was opened on February 1, 1991. R treats each of these accounts as a separate account on its books and records for business purposes. On October 1, 1990, the Internal Revenue Service notified R pursuant to paragraph (c)(1) of this section that F furnished an incorrect name/TIN combination with respect to the money market account. R timely sends F the notice required under paragraph (d) of this section and receives the certification required under paragraph (f) of this

section from F on November 1, 1990. On October 1, 1991, the Internal Revenue Service again notifies R that F furnished an incorrect name/TIN combination with respect to the money market account. Further, R determines from its business records that two notifications of an incorrect name/TIN combination have been received with respect to the money market account within 3 calendar years. R must send F the notice required under paragraph (g)(2) of this section and must commence backup withholding on reportable interest paid on the money market account pursuant to paragraph (g)(3) of this section after November 14, 1991, which is 30 business days after R received the second notice. R must continue to backup withhold under paragraph (g) of this section on the money market account until R receives notification from the Social Security Administration as described in paragraph (g)(5) of this section (or, if earlier, until backup withholding terminates under paragraph (g)(3)(iii) of this section). R is not required to backup withhold on the savings account unless and until it receives notice under paragraph (c) (1) or (2) of this section with respect to the savings account.

[T.D. 8409, 57 FR 13031, Apr. 15, 1992]

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

(a) *In general.* A payor must withhold under section 3406 at a rate of 31 percent on any reportable payment (as defined in section 3406(b)) made to a payee during the period described in this section (irrespective of the number of conditions for imposing withholding under section 3406 that exist with respect to the payee). A payor must continue to withhold under section 3406 until no condition for imposing backup withholding exists with respect to the payee.

(b) *Failure to furnish a taxpayer identification number in the manner required*—(1) *Start withholding.* A payor is required to withhold under section 3406(a)(1)(A) at a rate of 31 percent on any reportable payment (as defined in section 3406(b)) at the time the payor pays the reportable payment (as described in §31.3406(a)–4) to a payee if—

(i) The payor has not received the payee's taxpayer identification number in the manner required in §31.3406(d)–1; or

(ii) The payor has received notice from a broker (as required in §31.3406(d)–4(a)(1)(iii)) with respect to a readily tradable instrument that the payee did not furnish a taxpayer identification number to the broker in the manner required in §31.3406(d)–1 and the payor has not received the taxpayer identification number from the payee in this manner.

(2) *Stop withholding.* The payor must stop withholding under section 3406(a)(1)(A) within 30 days after the payor receives—

(i) The payee's taxpayer identification number in the manner required under §31.3406(d)–1; or

(ii) A statement, in such form and containing such information as is required under applicable regulations, that the payee is not a United States person.

(c) *Notification of an incorrect taxpayer identification number.* See §31.3406(d)–5(e) and (g)(3) for the period for which withholding is required in the case of notification of an incorrect taxpayer identification number.

(d) *Notified payee underreporting.* See §31.3406(c)–1(e) for the period for which withholding is required in the case of notified payee underreporting.

(e) *Payee certification failure*—(1) *Start withholding.* A payor is required to withhold under section 3406(a)(1)(D) at a rate of 31 percent on any reportable interest or dividend payment (as defined in section 3406(b)(2)) at the time the payor pays such reportable interest or dividend payment (as described in §31.3406(a)–4) to a payee if—

(i) The payor has not received from the payee the certification required in §31.3406(d)–2; or

(ii) The payor has received notice from a broker (as required in §31.3406(d)–4(a)(1)(iii)) with respect to a readily tradable instrument that the payee did not make the required certification and the payor has not received the required certification from the payee.

(2) *Stop withholding.* The payor must stop withholding under section 3406(a)(1)(D) on any reportable interest or dividend payment within 30 days after the payor receives the certification from the payee in the manner required by §31.3406(d)–2.

(f) *Rule for determining when the payor receives a taxpayer identification number or certificate from a payee.* In determining whether a payee has failed to