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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

provide a taxpayer identification number or any certification to a payor (including a Form W–8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payor receives the taxpayer identification number or certification from the payee or in certain cases, from a broker. Thus, the payor may take up to 30 days to treat the taxpayer identification number or a certificate as having been received.

[T.D. 8637, 60 FR 66127, Dec. 21, 1995]

§ 31.3406(f)–1 Confidentiality of information.

(a) *Confidentiality and liability for violation.* Pursuant to section 3406(f) no person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of the information (subject to an exception for good faith).

(b) *Permissible use of information*—(1) *In general.* A payor or broker may transmit information on a Form W–9, Form W–8, or other acceptable form relating to withholding to the department, institution, or firm (or to any employee therein) responsible for withholding or processing of taxpayer identification numbers, certifications described in §31.3406(h)–3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing withholding (as described in §31.3406(d)–4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, issue an instrument to, or redeem an instrument for, a person solely because the person fails to furnish the person's taxpayer identification number or documentation of foreign status in the manner required in §31.3406(d)–1 and §31.3406(g)–1, respectively. A payor who closes an account of a payee in the calendar year in which the account was opened and during which no taxpayer identification number or evidence of foreign status was provided for that account will be presumed in the absence of evidence to the contrary to have closed the account without violating section 3406(f) even though the payee is subject to backup withholding under section 3406(a)(1)(A). A payor, except as provided in §§31.3406(d)–3 and 31.3406(g)–3, may not prohibit a payee who fails to furnish the payee's taxpayer identification number in the manner required in §31.3406(d)–1 from withdrawing any funds in the account.

(2) *Window transactions.* In the case of a window transaction (as defined in §31.3406(b)(2)–3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* Except as provided in paragraph (b) of this section, a payor or broker is not permitted to—

(1) Close an account (or instrument) of a payee solely because that payee (or the account of a payee) is subject to withholding under section 3406(a)(1)(A), (B), (C), or (D);

(2) Refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting);

(3) Use information obtained under section 3406 (including a payee's failure or inability to certify that the payee is not subject to withholding due to notified payee underreporting or the fact that the account is subject to withholding), surcharge an account (i.e., charge an account more than the fee charged a similar account that was not subject to withholding under section 3406), or use that information to determine whether to open or close an account, whether to issue or redeem an instrument, or whether to extend credit to the payee.

[T.D. 8637, 60 FR 66127, Dec. 21, 1995]