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

(a) *Exempt recipients*—(1) *In general.* A payor of any reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payee is—

(i) An organization exempt from taxation under section 501(a) or an individual retirement account;

(ii) The United States or any wholly owned agency or instrumentality thereof;

(iii) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(iv) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing (as defined in regulations under section 892); or

(v) An international organization or any wholly owned agency or instrumentality thereof (as defined in section 7701(a)(18)).

(2) *Nonexclusive list.* Paragraph (a)(1) of this section does not prescribe an exclusive list of payees that are exempt from information reporting and also are exempt from withholding under section 3406.

(b) *Determination of whether a person is described in paragraph (a)(1) of this section.* The determination of whether a person is a payee described in paragraph (a)(1) of this section must be made as provided in the applicable provisions of section 6049 and the regulations issued thereunder. A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of section 6049, may require a payee, otherwise not required to file a certificate regarding its exempt status, to file a certificate and may treat a payee who fails to file the certificate as a person who is not an exempt recipient. See §31.3406(h)–3 for a description of the Form W–9 or a substitute form prescribed under section 3406 for claiming exempt status.

(c) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in section 3406(b)(1)) may, but is not required to, withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1996, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

(d) *Reportable payments made to Canadian nonresident alien individuals.* A payment of interest made to a Canadian nonresident alien individual under §1.6049–8(a) of this chapter is not subject to withholding under section 3406.

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after December 31, 2000, a payor is not required to backup withhold under section 3406 on a reportable payment that qualifies for the documentary evidence rule described in §1.6049–5(c)(1) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to notional principal contracts, see §1.6041–1(d)(5) of this chapter.

[T.D. 8637, 60 FR 66128, Dec. 21, 1995, as amended by T.D. 8664, 61 FR 17574, Apr. 22, 1996; T.D. 8734, 62 FR 53493, Oct. 14, 1997; T.D. 8804, 63 FR 72189, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53493, Oct. 14, 1997, §31.3406(g)–1 was amended by adding paragraph (e), effective Jan. 1, 1999. At 63 FR 72183, 72189, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000,

and paragraph (e), first sentence, was amended by removing ''December 31, 1998'' and adding ''December 31, 1999'', effective, Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was delayed until Jan. 1, 2001, and paragraph (e), first sentence, was amended by removing ''December 31, 1999'' and adding ''December 31, 2000'', effective, Jan. 1, 2001.

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

(a) *In general.* A payor of a reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payment is subject to withholding under any other provision of the Internal Revenue Code.

(b) *Payment of wages.* A payor who is required to make an information return under section 6041 with respect to a payment of wages (as defined in section 3401) because, e.g., the employee makes a certification under section 3402(n) (relating to employees incurring no income tax liability), must not withhold under section 3406 on those wages.

(c) *Distribution from a pension, annuity, or other plan of deferred compensation.* An amount reportable under section 6047, such as a designated distribution under section 3405, is not a reportable payment subject to withholding under section 3406. See section 3406(b). Designated distributions not subject to withholding under section 3406 include—

(1) Distributions from a pension, annuity, profit-sharing, stock bonus plan, or other plan deferring the receipt of compensation;

(2) Distributions from an individual retirement account or annuity;

(3) Distributions from an owner-employee plan; and

(4) Certain surrenders of life insurance contracts.

(d) *Gambling winnings*—(1) *In general.* A payor of a reportable gambling winning must not withhold under section 3406 if tax is required to be withheld from the gambling winning under section 3402(q) (relating to the extension of withholding to certain gambling winnings). If the reportable gambling winning is not required to be withheld upon under section 3402(q), withholding under section 3406 applies to the gambling winning if, and only if, the payee does not furnish a taxpayer identification number to the payor. Section 31.3406(b)(3)–1(b)(3) does not apply to a reportable gambling winning. The payor of a reportable gambling winning is not required to aggregate all such winnings made to a payee during a calendar year, nor is the payor required to determine whether an information return was required to be made with respect to the payee for the preceding year.

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of withholding under section 3406, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payor; by

(ii) The amount of the wager.

(3) *Special rules.* Amounts paid with respect to identical wagers are treated as paid with respect to a single wager. The determination of whether wagers are identical is made under §31.3402(q)–1(c)(1)(ii). In addition, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is $600 or more and if the proceeds are at least 300 times as large as the amount wagered. See §7.6041–1 of this chapter to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to withholding under section 3406.

(e) *Certain real estate transactions.* A real estate reporting person (the so-called broker) as defined in section 6045(e)(2) must not withhold under section 3406 on a payment made with respect to a real estate transaction that is subject to reporting under sections 6045 (a) and (e) and §1.6045–4 of this chapter.

(f) *Certain payments after an acquisition of accounts or instruments.* A payor who acquires pre-1984 accounts or instruments described in §31.3406(d)–1(b)(2)(iv) for which the payor does not have a taxpayer identification number