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is required to be withheld as provided in § 31.3403–1.

[T.D. 8637, 60 FR 66130, Dec. 21, 1995; 61 FR 11307, Mar. 20, 1996, as amended by 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(h)–2 was amended by revising paragraph (a)(3)(i); revising the penultimate sentence in paragraph (d); removing the heading of paragraph (e)(1); removing the paragraph designation (e)(1); and removing paragraph (e)(2), effective Jan. 1, 1999. At 63 FR 72183, 72189, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000, and paragraph (d) penultimate 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 (d) penultimate sentence, was amended by removing ''December 31, 1999'' and adding ''December 31, 2000'', effective Jan. 1, 2001. For the convenience of the user, the superseded text is set forth as follows:

§ 31.3406(h)–2 Special rules.

(a) * * *

(3) *Joint foreign payees*—(i) *In general.* If the first payee listed on an account or instrument provides the penalties of perjury statement regarding its foreign status, withholding under section 3406 applies unless—

(A) Every joint payee provides the statement regarding foreign status (pursuant to the relevant regulations issued under sections 6045 and 6049); or

(B) Any one of the joint payees who has not established foreign status provides a taxpayer identification number to the payor in the manner required in § 31.3406(d)–1.

* * * * *

(d) * * * If its payee is not subject to withholding under section 3406, the middleman payor must pay or credit the full amount of the payment to the payee. * * *

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§ 31.3406(h)–3 Certificates.

(a) *Prescribed form to furnish information under penalties of perjury*—(1) *In general.* Except as provided in paragraph (c) of this section, the Form W–9 is the form prescribed under section 3406 on which the payee certifies, under penalties of perjury, that—

(i) The taxpayer identification number furnished to the payor is correct (as required in § 31.3406(d)–1 and § 31.3406(d)–5);

(ii) The payee is not subject to withholding due to notified payee underreporting (as required in § 31.3406(d)–2);

(iii) The payee is an exempt recipient (as described in § 31.3406(g)–1); or

(iv) The payee is awaiting receipt of a taxpayer identification number (as described in § 31.3406(g)–3).

(2) *Use of a single or multiple Forms W–9 for accounts of the same payee.* A valid Form W–9 must include the name and taxpayer identification number of the payee. Except as provided in paragraph (b) of this section, the payee must sign under penalties of perjury and date the Form W–9 in order to satisfy the requirements of this section. A payor or broker may require a payee to furnish a separate Form W–9 for each obligation, deposit, certificate, share, membership, contract, or other instrument, or one Form W–9 for all the payee's obligations or relationships with the payor or broker. In addition, a payee of a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds (within the same family of funds) may be permitted, in the discretion of the mutual fund, to provide one Form W–9 with respect to shares acquired or owned in any of the funds.

(b) *Prescribed form to furnish a noncertified taxpayer identification number.* With respect to accounts or other relationships where the payee is not required to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, the payor or broker may obtain the taxpayer identification number orally or may use Form W–9, a substitute form, or any other document, but the payee is not required to sign the form.

(c) *Forms prepared by payors or brokers—(1) Substitute forms; in general.* A payor or broker may prepare and use a form that contains provisions that are substantially similar to those of the official Form W–9. A payor or broker may use any document relating to the transaction, such as the signature card for an account, so long as the certifications are clearly set forth. A payor or broker who uses a substitute form may furnish orally or in writing the instructions for the Form W–9 that relate

to the account. A payor or broker may refuse to accept certifications (including the official Form W–9) that are not made on the form or forms provided by the payor or broker. A payor or broker may refuse to accept a certification provided by a payee only if the payor or broker furnishes the payee with an acceptable form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form. An acceptable form for this purpose must contain a notice that the payor or broker has refused to accept the form submitted by the payee and that the payee must submit the acceptable form provided by the payor in order for the payee not to be subject to withholding under section 3406. If the payor or broker requires the payee to furnish a form for each account of the payee, the payor or broker is not required to furnish an acceptable form until the payee furnishes the payor or broker with the payee's account numbers. A payor or broker may use separate substitute forms to have a payee certify under penalties of perjury that—

(i) The payee's taxpayer identification number is correct; and

(ii) The payee is not subject to withholding under section 3406 due to notified payee underreporting.

(2) *Form for exempt recipient.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the payee is an exempt recipient (described in §31.3406(g)–1 or described in the respective reporting section), provided the form contains provisions that are substantially similar to those of the official Form W–9 relating to exempt recipients. A certificate must be prepared in accordance with the instructions applicable to exempt recipients on Form W–9, and must set forth fully and clearly the data called for therein. If a payor will treat the payee as an exempt recipient only if the payee files a certificate as to its exempt status, the certificate is valid only if it contains the payee's taxpayer identification number. Thus, a payee must include the payee's taxpayer identification number on a certificate that a payor requires to be made in order to treat the payee as an exempt recipient.

(d) *Special rule for brokers.* A broker may act as the payee's agent for purposes of furnishing a taxpayer identification number or certification to a payor with respect to any readily tradable instrument (as defined in §31.3406(h)–1(d)) provided the payee provides a taxpayer identification number on Form W–9 or other acceptable substitute form to the broker. The payor may rely on a taxpayer identification number provided by the broker unless certification is required (as described in §31.3406(d)–4) and the broker notifies the payor that the number was not certified.

(e) *Reasonable reliance on certificate*—(1) *In general.* A payor is not liable for the tax imposed under section 3406 if the payor's failure to deduct and withhold the tax is due to reasonable reliance, as defined in paragraph (e)(2) of this section, on a Form W–9 (or other acceptable substitute) required by this section.

(2) *Circumstances establishing reasonable reliance.* For purposes of paragraph (e)(1) of this section, a payor can reasonably rely on a Form W–9 (or other acceptable substitute) unless—

(i) The form does not contain the name and taxpayer identification number of the payee (or does not state, in lieu of a taxpayer identification number, that the payee is awaiting receipt of a taxpayer identification number (i.e., an awaiting-TIN certificate));

(ii) The form is not signed and dated by the payee;

(iii) The form does not contain the statement, when required, that the payee is not subject to withholding due to notified payee underreporting;

(iv) The payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form; or

(v) For purposes of section 3406(a)(1)(C), the payor is required to subject the account to which the form relates to withholding under section 3406(a)(1)(C) under the circumstances described in §31.3406(c)–1(c)(3)(iii).

(f) *Who may sign certificate*—(1) *In general.* A Form W–9 or other acceptable substitute form may be signed by any person who is authorized to sign a declaration under penalties of perjury on

behalf of the payee as provided in section 6061 and the regulations thereunder (relating to who may sign generally for an individual, which includes certain agents who may sign returns and other documents), section 6062 and the regulations thereunder (relating to who may sign corporate returns), and section 6063 and the regulations thereunder (relating to who may sign partnership returns).

(2) *Notified payee underreporting.* A payee who has not been notified that he is subject to withholding under section 3406(a)(1)(C) as a result of notified payee underreporting may make the certification related to notified payee underreporting. In addition, a payee who was subject to withholding under section 3406(a)(1)(C) due to notified payee underreporting may certify that he is not subject to withholding under section 3406(a)(1)(C) due to notified payee underreporting if the Internal Revenue Service has provided the payee with written certification that withholding under section 3406(a)(1)(C) due to notified payee underreporting has terminated.

(g) *Retention of certificates*—(1) *Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.* With respect to an account or instrument that is not a pre-1984 account (as described in §31.3406(d)–1(b)(3)), or with respect to a brokerage relationship that is a post-1983 brokerage account (as described in §31.3406(d)–1(c)(2)), a payor or broker who receives a Form W–9 or other acceptable substitute form related to withholding under section 3406 must retain the form in its records for 3 years from the date the account is opened or the instrument is purchased. The form may be retained on microfilm or microfiche.

(2) *Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.* With respect to a pre-1984 account (as described in §31.3406(d)–1(b)(1)) or with respect to a brokerage relationship that is not a post-1983 brokerage account (as described in §31.3406(d)–1(c)(1)), a payor or broker is not required to retain any Form W–9 or other acceptable substitute form. If, however, the payor or broker requires the payee to file only one Form W–9 or substitute form for all accounts or instruments of the payee, the payor or broker must retain the single form in the manner and for the period of time described in paragraph (g)(1) of this section if that form relates to any account or instrument that is not a pre-1984 account or relates to a post-1983 brokerage account. If a payee has certified that the payee is an exempt recipient described in §31.3406(g)–1, the payor or broker must retain the form unless the payor or broker can establish the existence of procedures that are reasonably calculated to ensure that a payee who has so certified is accurately identified in the payor's or broker's records.

(h) *Cross references.* For the requirement to file an information return (and furnish the related statement) with respect to a reportable payment, particularly if that payment has been subject to withholding under section 3406, see subtitle F, chapter 61, subparts B and C of the Internal Revenue Code. See §31.6302–4 for the requirement to deposit amounts withheld under section 3406 on either a monthly or semi-weekly basis. See §31.6011(a)–4(b) for the requirement to file Form 945, Annual Return of Withheld Federal Income Tax, to reflect amounts withheld under section 3406. See §31.6071(a)–1 for the time for filing the Form 945.

[T.D. 8637, 60 FR 66131, Dec. 21, 1995]

§31.3406(i)–1 Effective date.

Sections 31.3406–0 through 31.3406(i)–1 (except §§31.3406(d)–5 and 31.3406(g)–1(c) and except for international transactions) are effective after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. For the effective date of §31.3406(d)–5, see §31.3406(d)–5(i). Section 31.3406(g)–1(c) is effective before January 1, 1997. See §§35a.9999–0T through 35a.9999–5 of this chapter for rules that apply to international transactions after December 31, 1996.

[T.D. 8637, 60 FR 66133, Dec. 21, 1995]