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criteria for a determination under paragraph (g)(4) of this section.

(k) *Penalties*—(1) *Failure to withhold.* See A–2 of §35a.9999–3 for rules relating to penalties applicable to a payor who fails to withhold on reportable interest and dividend payments made to a payee subject to backup withholding.

(2) *False certification*—(i) *Criminal penalty under section 7205(b).* If any individual willfully makes a false certification under section 3406(d) (1) or (2), then that individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(ii) *Civil penalty under section 6682*—(A) *In general.* In addition to any criminal penalty provided by law, if any individual makes a statement under section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24 of the Internal Revenue Code and, as of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. The penalty is due upon notice and demand and pursuant to section 6682 collection is not subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. See section 6682.

(B) *Waiver of penalty.* The payee may obtain a waiver (in whole or part) of the penalty imposed under section 6682(a) and paragraph (k)(2)(ii)(A) of this section if it is established to the satisfaction of the Internal Revenue Service that the taxes imposed under subtitle A of the Internal Revenue Code with respect to the payee for the taxable year in which the false certification was made are equal to or less than the sum of—

(*1*) The credits against taxes allowed by part IV of subchapter A of chapter 1 of the Internal Revenue Code, and

(*2*) The payments of estimated tax which are considered payments on account of such taxes.

(C) *Procedure for seeking a waiver.* To request a waiver under section 6682(b) and paragraph (k)(2)(ii)(B) of this section, the payee must submit to the Internal Revenue Service a written statement with supporting documents to establish all the facts necessary in order to obtain the waiver. The statement must be signed by the person that otherwise would be subject to the penalty imposed by section 6682(a) and paragraph (k)(2)(ii)(A) of this section and must contain a declaration that it is made under penalties of perjury.

(3) *Delay of assessment.* If a payee institutes or maintains a suit with the United States Tax Court primarily to delay assessment and the payee's position is frivolous or groundless, or the payee unreasonably failed to pursue available administrative remedies, the court may award up to $5,000 in damages under section 6673. The damages will be assessed against and collected from the payee in the same manner as the underlying tax.

(l) *Effective Date.* This section is effective until December 31, 1996.

[T.D. 8137, 52 FR 13432, Apr. 23, 1987, as amended at 60 FR 66134, Dec. 21, 1995; 61 FR 11308, Mar. 20, 1996]

§ 35a.9999–0 Effective date.

See §31.9999–0 of this chapter for applicability dates for §§35a.9999–1 through 35a.9999–5.

[T.D. 8734, 62 FR 53494, Oct. 14, 1997]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–0 was added, effective Oct. 14, 1997, through Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was extended until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was extended until Jan. 1, 2001.

§ 35a.9999–1 Questions and answers concerning the due diligence requirement and the certification requirements in connection with backup withholding and other related issues.

The following questions and answers principally concern the due diligence exception to the penalty on payors of reportable interest or dividend payments for failure to provide the payee's correct taxpayer identification number on certain information returns and the certification requirements in connection with backup withholding under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369):

IN GENERAL

Q–1. What payors are subject to the new due diligence requirement with respect to their obligation to provide payees' correct taxpayer identification numbers on information returns?

A–1. Payors of reportable interest or dividend payments are subject to the new due diligence requirement.

Q–2. What is a reportable interest or dividend payment?

A–2. A reportable interest or dividend payment is a payment of interest, dividends, or patronage dividends that is of a kind, and to a payee, that is subject to information reporting.

IMPOSITION OF PENALTY FOR FAILURE TO PROVIDE A CORRECT TAXPAYER IDENTIFICATION NUMBER

Q–3. Is a payor subject to a penalty for failure to provide a correct taxpayer identification number on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the taxpayer identification number furnished to the payor is the payee's correct number, the payor provided that number on an information return, and the number is later determined not to be the payee's correct number?

A–3. No. A payor is not subject to a penalty for failure to provide the payee's correct taxpayer identification number on an information return, if the payee has certified, under penalties of perjury, that the taxpayer identification number provided to the payor was his correct number, and the payor included such number on the information return.

Q–4. Is a payor subject to a penalty for failure to provide a correct taxpayer identification number on an information return if the payee does not certify, under penalties of perjury, that the taypayer identification number provided to the payor is correct, and the number is later determined not to be the payee's correct number?

A–4. A payor is subject to a penalty if the taxpayer identification number of a payee provided on an information return is determined not to be the payee's correct number, unless the payor exercised due diligence in soliciting the payee's correct taxpayer identification number and in furnishing such number on the information return. See A–51 of § 35a.9999–3 for the general rule for the actions that a payor of an account or instrument that is not a pre-1984 account (as defined in A–34 of § 35a.9999–1 and A–20 of § 35a.9999–3) must take to exercise due diligence under section 6676(b).

DUE DILIGENCE DEFINED FOR PRE-1984 ACCOUNTS AND INSTRUMENTS

Q–5. In order for a payor of a reportable interest or dividend payment to be considered to have exercised due diligence in furnishing the correct taxpayer identification number of a payee with respect to a pre-1984 account or instrument, what actions must the payor take?

A–5. First, by the applicable date provided in A–6, the payor must send a separate mailing by first-class mail to any payee who has not previously certified, under penalties of perjury, that the taxpayer identification number furnished to the payor is the payee's correct number. This mailing must contain a notice that: (1) Informs the payee what a taxpayer identification number is, (2) advises the payee that he must provide a correct taxpayer identification number to the payor, (3) states that if the payee has not furnished a correct taxpayer identification number to the payor the payee may be subject to a $50 penalty and that payments to the payee may be subject to backup withholding starting on January 1, 1984, and (4) advises the payee how to provide a correct taxpayer identification number to the payor. The form of the notice is described in A–7. The payor must also include in the mailing a postage-prepaid reply envelope and a certification form on which the payee may certify, under penalties of perjury, that he is furnishing his correct taxpayer identification number to the payor. The specific requirements for the form of this certification are set forth in A–9 and A–10.

Second, in the case of a pre-1984 account or instrument for which the payee has provided no taxpayer identification number or for which the taxpayer identification number provided is obviously incorrect (*i.e.*, contains an incorrect number of digits), the payor

must have commenced backup withholding on payments made after December 31, 1983.

Third, the payor must use the same care in processing taxpayer identification numbers provided by payees that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

Fourth, the payor must send a mailing in each year subsequent to 1983 to payees who have not by that time provided a taxpayer identification number under penalties of perjury. This mailing need not be sent separately from other mail to the payee. This mailing also need not contain a postage-prepaid reply envelope. The payor is required to process responses to this mailing in the same manner described in the preceding paragraph. See A–7A of this section for the rule for nonseparate annual mailings. See A–56 of this section for the actions that payors who failed to exercise due diligence as described in A–5 and A–6 and the related questions and answers on due diligence under this section on all or part of their pre-1984 accounts or instruments may take to be relieved of the penalty otherwise due under section 6676(b).

Q–6. In order to be considered to have exercised due diligence in soliciting the payee's taxpayer identification number, by what date must the payor send the separate mailing described in A–5 to a payee who has not previously provided his correct taxpayer identification number to the payor under penalties of perjury?

A–6. The separate mailing must be made on or before December 31, 1983, unless the payor complies with the alternative procedure set forth in the following two paragraphs.

A payor may defer the separate mailing referred to above, *Provided,* That the payor: (1) Sends a separate mailing by December 31, 1983, to all payees who have not furnished a taxpayer identification number to the payor or who have furnished an obviously incorrect number; (2) sends a mailing, which need not be separate from other mail, on or before December 31, 1983, to all other payees who have not previously provided their taxpayer identification numbers to the payor under penalties of perjury; and (3) sends, on or before March 31, 1984, a separate mailing to all payees who have not by that date certified under penalties of perjury that their taxpayer identification numbers provided to the payor are correct.

The separate and nonseparate mailing required in 1983 and the separate mailing required on or before March 31, 1984, must include the notice, certification form, and postage-prepaid reply envelope as required in A–5. Any separate mailing made in 1984 pursuant to the prior paragraph does not replace a 1984 nonseparate mailing that is otherwise required by the fourth paragraph of A–5.

Q–7. In what form should the payor notify the payee of the information set forth in A–5 and solicit the payee's correct taxpayer identification number, in order to satisfy the due diligence requirement with respect to a pre-1984 account or instrument?

A–7. The notice will satisfy the requirement of A–5 if it is conspicuous and contains language substantially similar to the following:

IMPORTANT NEW TAX INFORMATION

Under the Federal income tax law, you are subject to certain penalties as well as withholding of tax at a 20 percent rate if you have not provided us with your correct social security number or other taxpayer identification number. Please read this notice carefully.

You (as a payee) are required by law to provide us (as payor) with your correct taxpayer identification number. If you are an individual, your taxpayer identification number is your social security number. If you have not provided us with your correct taxpayer identification nunber, you may be subject to a $50 penalty imposed by the Internal Revenue Service. In addition, interest, dividends, and other payments that we make to you may be subject to backup withholding starting on January 1, 1984.

Backup withholding is different from the 10 percent withholding on interest and dividends that was repealed in 1983. If backup withholding applies, a payor is required to withhold 20 percent of interest, dividends, and other payments made to you. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained.

Enclosed is a postage-prepaid reply envelope in which you may return the enclosed form to furnish us your correct name and

taxpayer identification number. Please sign the form and return to us.

SUBSEQUENT YEAR'S MAILING

Q–7A. In order for a payor of reportable interest or dividend payments to be considered to have exercised due diligence in soliciting a taxpayer identification number of a payee with respect to a pre-1984 account or instrument, what information is the payor required to include in the subsequent year's mailing (nonseparate annual mailings) described in the fourth paragraph of A–5 of § 35a.9999–1 to a payee who has not provided the payor with a certification, under penalties of perjury, that his taxpayer identification number is correct?

A–7A. The payor is required to include (1) an appropriately modified copy of the notice described in A–7 of § 35a.9999–1, (2) a Form W–9 or acceptable substitute form for the payee to provide a correct taxpayer identification number, and (3) a reply envelope (self-addressed) for the payee to return the Form W–9 or acceptable substitute form. However, for those subsequent mailings described in A–5 or A–6 made before the 1988 calendar year, the mailings should, but are not required to, contain the reply envelope.

Q–7B. In order to be considered to have exercised due diligence in soliciting the payee's certified taxpayer identification number, by what date must the payor of reportable interest or dividends mail the subsequent year's mailing described in the fourth paragraph of A–5 and in A–7A of this section to a payee of a pre-1984 account who has not certified, under penalties of perjury, that his taxpayer identification number is correct?

A–7B. The payor may send the mailing at any time during each year that a nonseparate annual mailing is required, but in no event later than December 31 of such year. Section 7503 shall apply in determining the time for sending the subsequent year's mailing if December 31 falls on a Saturday, Sunday, or a legal holiday.

Q–8. In order to be considered to have exercised due diligence, is a payor required to request the payee to return the form certifying that the taxpayer identification number provided to the payor is correct?

A–8. The payor may request the payee to sign and return the form irrespective of whether the taxpayer identification number shown for the payee is the payee's correct taxpayer identification number. Alternatively, the payor may request that the payee return the form only in the event that the taxpayer identification number shown for the payee is incorrect, or if no taxpayer identification number is shown. If the payor uses the alternative instruction described in the preceding sentence, the payor may make suitable changes to the last paragraph of the notice prescribed in A–7.

If, however, the payee does not return the form certifying his taxpayer identification number under penalties of perjury, the payor is required in each subsequent year to request the payee to provide his correct taxpayer identification number under penalties of perjury (until the payee so certifies his taxpayer identification number).

Q–9. What form may the payee use to certify that the taxpayer identification number provided to the payor is correct?

A–9. The Internal Revenue Service is currently preparing Form W–9 on which a payee may certify his taxpayer identification number under penalties of perjury. Form W–9 will be available in mid October upon request to any Internal Revenue Service district director.

Q–10 May a payor use a substitute form instead of Form W–9 for a payee to certify, under penalties of perjury, that the taxpayer identification number provided to the payor is correct?

A–10. Yes. A substitute form must include space for the payee to provide his name, address, and taxpayer identification number. The form also must include space for the payee to certify under, penalties of perjury, that he is furnishing his correct taxpayer identification number to the payor. The wording of the certification must be substantially similar to the following: ''Under penalties of perjury, I certify that the number shown on this form is my correct taxpayer identification number.'' If a payor uses a substitute form, the payor must provide either

the Internal Revenue Service's instructions for Form W–9 or the substance of those instructions on or with the substitute form.

A signed copy of the Form 4029 or Form 8812 which contains the payee's name, address, and taxpayer identification number is deemed to be a substitute Form W–9 signed under penalties of perjury with respect to such number. However, the penalties associated with the penalties of perjury statement will not apply with respect to the taxpayer identification number on such form.

Q–11. In order to satisfy the due diligence requirement for pre-1984 accounts and instruments, is a payor required to send the mailing or mailings described in A–5 and A–6 to a payee who has previously furnished a taxpayer identification number to the payor, but who has not certified under penalties of perjury that the number provided to the payor is his correct taxpayer identification number?

A–11. Yes. A payor must send the mailing or mailings as required in A–5 and A–6 to any payee of a reportable interest or dividend payment who has not previously certified under penalties of perjury that the taxpayer identification number provided to the payor is the payee's correct number.

Q–12. May a payor satisfy the due diligence requirement by sending the separate mailings described in A–5 and A–6 with other mail the payor sends to the payee?

A–12. No. The separate mailing soliciting a certificate providing the payee's correct taxpayer identification number under penalties of perjury must not include any other communication to the payee. No material may be included in the separate mailing to the payee other than the notice, certification form and instructions, and postage-prepaid reply envelope.

Q–13. What action must a payor take with respect to accounts opened, or instruments acquired, subsequent to the date on which the payor prepares its list of payees for a mailing required in 1983 but prior to January 1, 1984?

A–13. The payor is required to send the mailing otherwise required to be made by December 31, 1983, to the payees of such accounts and instruments not later than January 31, 1984, unless the payee has previously provided his taxpayer identification number to the payor under penalties of perjury.

Q–14. If a payor makes no reportable interest or dividend payments to a payee with respect to an account or instrument during 1983, so that the payor is not required to make a 1983 information return with respect to the payee, is the payor nevertheless required to send the mailing or mailings to the payee as provided in A–5 and A–6?

A–14. The payor must *either:* (1) Send the mailing or mailings in the manner and within the time periods provided in A–5 and A–6 or (2) send the separate mailing described in A–5 to the payee not later than October 1 of the year in which a payment to the payee with respect to the account or instrument first becomes reportable, or, if later, within 30 days after such reportable payment occurs. Thus, if payments to the payee aggregate less than $10 in 1983, so that no 1983 information return is required, the payor need not make the mailing or mailings described in A–5 and A–6 within the time period provided in A–6; the payor must, however, make the separate mailing described in A–5 to the payee in the first year that payments to the payee aggregate $10 or more.

Q–15. If the payor has obtained a certificate, signed under penalties of perjury, setting forth the payee's taxpayer identification number within the applicable time period in A–6, must the payor nevertheless make the mailing or mailings described in A–5 and A–6 to the payee in order to be considered to have exercised due diligence in obtaining the payee's correct taxpayer identification number?

A–15. No. The mailing requirement applies only to a payee from whom the payor has not previously received a taxpayer identification number certified under penalties of perjury.

Q–16. May a payor obtain the form containing the payee's taxpayer identification number, signed under penalties of perjury, through a solicitation for such certification, in addition to the mailing or mailings required by A–5 and A–6, contained in a regular mailing to the payor's customers?

A–16. Yes. Such a certification may be obtained by a solicitation contained

in a regular business mailing, by a request in person to a payee, or otherwise.

SPECIAL RULES RELATING TO THE DUE DILIGENCE REQUIREMENT FOR PRE-1984 ACCOUNTS AND INSTRUMENTS

Q–17. Is a payor considered to have exercised due diligence in soliciting the correct taxpayer identification number with respect to pre-1984 accounts and instruments if the payor sends the required mailings to the last known address of the payee?

A–17. Yes.

Q–18. Is a payor required to send the required mailing or mailings to a payee's last known address in a case where other mailings to that address have been returned to the payor because the address was incorrect and no new address has been provided to the payor?

A–18. No. In such a situation, the payor is required to handle the required mailings in the same manner that he handles other correspondence to the payee.

Q–19. Is a payor required to send the mailing or mailings to the payee of an account or instrument with respect to which there is currently a ''do not mail'' or a ''stop mail hold'' instruction pursuant to which the payor does not send any mail to the payee?

A–19. No. A payor must, however, handle all required mailings in the same manner that the payor handles other correspondence with the payee.

Q–20. Is a payor required to send mailings to all payees listed on a joint account or jointly held instrument?

A–20. No. A payor is required to send mailings only to the first person listed on an account or instrument because the taxpayer indentification number of that person is the one required to be provided on an information return.

Q–21. If a payor has a Form W–6 or W–7 exemption certificate, relating to the now-repealed 10 percent withholding on interest and dividends, signed by a payee, must the payor send the mailings to the payee?

A–21. Generally, yes. The Internal Revenue Service Forms W–6 and W–7 did not contain a certification, under penalties of perjury, that the taxpayer identification number furnished by the payee was correct. If, however, the payor utilized a substitute Form W–6 or W–7 on which a payee certified under penalties of perjury in the manner provided on Form W–9 or in A–10 that the taxpayer identification number furnished to the payor was the payee's correct number, the payor is not required to send mailings to the payee.

Q–22. Is a payor of reportable interest or dividends required to send mailings to a corporation or other exempt recipient?

A–22. No. A payment of interest to a corporation or other exempt recipient described in §1.6049–4(c)(1)(ii) of the Income Tax Regulations generally is not subject to information reporting. Thus, mailings to such recipients are not required. Although a payment of dividends or patronage dividends to a corporation and certain other exempt recipients generally is subject to information reporting, payors are not required to send mailings to persons described in §31.3452(c)–1 (b) through (p) of the Income Tax Regulations in order to satisfy the due diligence requirement. A payee shall be considered an exempt recipient for the purpose of this rule if (1) the payee could be treated as an exempt recipient without the requirement of filing an exemption certificate under §31.3452(c)–1 (b) through (p) of the Income Tax Regulations or (2) the payee has provided the payor with a certificate, signed under penalties of perjury, stating that the payee is an exempt recipient described in one or more paragraphs of §31.3452(c)–1 (b) through (p) of the Income Tax Regulations. Form W–9 may be used for the purpose of making this certification. Alternatively, the payor may provide the payee with a substitute form for such certification, provided that the form conforms generally to Form W–9 and the instructions related to exempt recipients.

Q–23. Is a payor required to send mailings to a payee with respect to an account established under the Uniform Gift to Minors Act?

A–23. Yes. The law requires that the social security number of the minor be provided to the payor with respect to accounts established under the Uniform Gift to Minors Act. If the minor does not have a social security number, the minor may obtain one by filing a

Form SS–5 with a Social Security Administration Office. The form certifying that the minor's social security number provided is correct may be signed by the custodian of the Uniform Gift to Minors Act account.

Q–24. Is a payor required to send mailings to a payee where the account is held as a club account, bowling league account, recreation account, or other informal account?

A–24. Yes. The law requires that the taxpayer identification number of the organization be provided to the payor. If the club, league, or other informal association does not have an employer identification number, one may be obtained by filing a Form SS–4 with an Internal Revenue Service Center.

Q–25. Must the payee sign and return to the payor the form certifying the payee's correct taxpayer identification number under penalties of perjury in order for the payor to satisy the due diligence requirement?

A–25. No. The determination of whether the payor exercised due diligence in soliciting the payee's correct taxpayer identification number does not depend upon whether the payee signs and returns the form certifying his correct taxpayer identification number. If, however, the payee does not provide his taxpayer identification number to the payor under penalties of perjury, the payor is required to continue to solicit a certified taxpayer identification number from the payee in each year subsequent to 1983 until the payee has provided a certified taxpayer identification number. Such subsequent annual solicitations need not be made, however, in a separate mailing.

REQUIREMENT OF BACKUP WITHHOLDING

Q–26. If a payee does not provide a taxpayer identification number to the payor what action is a payor required to take?

A–26. Starting January 1, 1984, the payor is required to commence backup withholding with respect to reportable payments to payees who have not provided a taxpayer identification number to the payor. If an individual payee does not have a social security number, he may obtain one by filing Form SS–5 with a Social Security Administration Office. Other payees may obtain an employer identification number by filing Form SS–4 with an Internal Revenue Service Center.

Q–27. Is a payor of reportable interest or dividends required to impose backup withholding with respect to payments made after December 31, 1983, to a payee of an account that existed, or an instrument that was held by the payee, on December 31, 1983, if the payee has not provided the payor with a written certification under penalties of perjury that the taxpayer identification number furnished is correct?

A–27. No. A payor of reportable interest or dividends that are paid with respect to an account or instrument existing on December 31, 1983, is not required to impose backup withholding starting on January 1, 1984, simply because the payee has failed to certify his taxpayer identification number under penalties of perjury.

Q–28. Is a payor required to impose backup withholding with respect to a reportable interest or dividend payment made on or after January 1, 1984, if the taxpayer identification number furnished by the payee does not contain the proper number of digits?

A–28. Yes. A payor shall treat the payee as having failed to furnish a taxpayer identification number if the number provided does not contain the proper number of digits. The proper number of digits is nine for both the social security number and the employer identification number.

Q–29. Is a payor of reportable interest or dividend payments required to impose backup withholding on a payment made to an exempt recipient?

A–29. No. A payor is not required to withhold on a payment made to a person described in §31.3452(c)–1 (b) through (p) of the Income Tax Regulations. A payee shall be considered an exempt recipient for purposes of this rule if (1) he may be treated as an exempt recipient without the requirement of filing an exemption certificate under the cited regulation or (2) the payee has provided the payor with a certificate, signed under penalties of perjury, stating that a payee is an exempt recipient described in one or more paragraphs of the cited regulation. Form W–9 may be used for the purpose of making this certification. Alternatively, the payor may provide

the payee with a substitute form for such certification, provided that the substitute form conforms generally to Form W–9 and the instructions related to exempt recipients. A payor may in any case require an exempt recipient not otherwise required to file a certificate as to his status as an exempt recipient to file such a certificate, and may treat an exempt recipient who fails to file such a certificate as a person who is not exempt. A payor may require a separate certificate for each account or instrument maintained by an exempt recipient. A payor may require that any certification that a payee is an exempt recipient be made only on the substitute form provided by the payor; in that case, the payor must comply with the pertinent portions of § 31.3452(f)–1(b)(2) of the Income Tax Regulations relating to the procedures that a payor must follow upon receipt of an unacceptable form.

Q–30. Is a payor required to impose backup withholding on a pension or annuity distribution made on or after January 1, 1984, if the payee has not provided his taxpayer identification number to the payor?

A–30. If pension withholding under section 3405 applies to a pension or annuity distribution and the payee does not make an election not to have pension withholding apply under that section, backup withholding does not apply. If, however, the payee makes such election under section 3405 or pension withholding does not otherwise apply, and the payee does not provide his taxpayer identification number to the payor (or the taxpayer identification number provided is obviously incorrect), the payor is required to withhold 20 percent of any payment to the payee to which section 6041 applies, unless the conditions of the following paragraph are satisfied.

If the annual distributions to a payee total $5,400 or less (in which case withholding under section 3405 generally is not required), and if the payor has no social security number for the payee (or the social security number provided is obviously incorrect), the payor shall not impose backup withholding until the first payment made after June 30, 1984. By that date, the payee will have been able to obtain a social security number and provide it to the payor, in which case no amounts will be withheld.

Q–31. In determining whether a payee has failed to provide a taxpayer identification number with respect to an account that was in existence or an instrument held on December 31, 1983, so that backup withholding is imposed starting January 1, 1984, within what period of time just a taxpayer identification number provided by a payee be treated as having been received?

A–31. A payor must process a taxpayer identification number within 30 days after the payor receives the taxpayer identification number from the payee. Thus, for example, if a payor has no taxpayer identification number for a payee, and the payee provides his taxpayer identification number to the payor on December 15, 1983, the payor must process the number not later than January 14, 1984. As a result, the payor would be authorized to commence backup withholding with respect to payments made to the payee commencing January 1, 1984, but backup withholding must cease by January 14, 1984. The payor also is authorized to treat the taxpayer identification number as having been received at any time after it is provided, so that backup withholding need not be commenced in the circumstance outlined above.

CERTIFICATION REQUIREMENTS FOR ACCOUNTS OPENED AND INSTRUMENTS ACQUIRED AFTER 1983

Q–32. What actions must a payor take with respect to accounts that are opened or instruments acquired on or after January 1, 1984, in order to avoid imposing backup withholding on reportable interest or dividend payments?

A–32. In order to avoid imposing backup withholding with respect to accounts that are opened or instruments acquired on or after January 1, 1984, a payor of reportable interest or dividend payments must obtain a certification from the payee, signed under penalties of perjury, (1) that the taxpayer identification number provided to the payor is the payee's correct number and (2) that the payee is not subject to backup withholding due to notified payee

underreporting. The form for these certifications is prescribed in A–35 and A–36.

Q–33. What payees can make the certification that they are not subject to backup withholding due to notified payee underreporting?

A–33. Any payee who has not been notified that he is subject to backup withholding as a result of notified payee underreporting can make the certification under the law. In addition, a payee who was subject to backup withholding due to notified payee underreporting may certify that he is not subject to backup withholding due to notified payee underreporting if the Service has provided the payee with written certification that backup withholding due to notified payee underreporting has terminated.

Q–34. Under what circumstances will an account be considered to have been in existence, or an instrument be considered to have been held, before January 1, 1984 (a ''pre-1984 account'')?

A–34. An account that is in existence before January 1, 1984, will be considered a pre-1984 account, irrespective of whether additional deposits are made to the account on or after January 1, 1984. In addition, if shares of a corporation are held before January 1, 1984 (or considered held before such date by operation of this rule), and additional shares are received by the holder, irrespective of whether such shares are received by reason of a stock dividend, as a result of an infusion of new cash, or otherwise, the new shares received will be considered a pre-1984 account, in the discretion of the payor. Where an account is opened, or an instrument is acquired automatically on the maturity or termination of an account that was in existence or instrument held before January 1, 1984 (or considered to have been in existence or held before such date by operation of this rule), without the participation of the payee, the new account or instrument will be considered a pre-1984 account, in the discretion of the payor. For purposes of the preceding sentence, a payee shall not be considered to have participated in the acquisition of the new account or instrument solely by reason of the failure to exercise a right to withdraw funds on maturity or termination of the old account or instrument. Where a discount instrument with a maturity not exceeding one year (a ''short-term instrument'') is acquired upon the maturity of a short-term instrument, the participation of the payee in the acquisition of the newly-acquired instrument shall not be taken into account, and the new instrument shall be considered to have been acquired automatically, with respect to instruments acquired prior to January 1, 1985. In the case of insurance policies in effect on December 31, 1983, the election of a dividend accumulation option pursuant to which interest is paid, or the creation of an ''account'' in which proceeds of a policy are held for the policy beneficiary, may, in the payor's discretion, be treated as a pre-1984 account.

Q–35. What form may a payee of reportable interest or dividends use to certify under penalties of perjury, that the taxpayer identification number provided to the payor is correct and that he is not subject to backup withhholding due to notified payee underreporting?

A–35. A payee may use Internal Revenue Service Form W–9 for both required certifications.

Q–36. May a payor of reportable interest or dividends or a broker provide a substitute form for a payee to certify under penalties of perjury that his taxpayer identification number is correct and that he is not subject to backup withholding due to notified payee underreporting?

A–36. Yes. A payor or broker may use a substitute form provided the language of the certification is substantially similar to the following: ''Under penalties of perjury, I certify (1) that the number shown on this form is my correct taxpayer identification number and (2) that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.'' A payor or broker may use separate substitute forms to have the payee certify under penalties of perjury that (i) his taxpayer identification number is correct, provided the language is substantially similar to the certification in A–10 and (ii) he is not subject to backup

withholding due to notified payee underreporting provided the language is substantially similar to clause (2) of the preceding sentence. A payor or broker also may incorporate both required certifications into other business forms, customarily used, such as account signature cards, provided the required certifications are clearly set forth.

If a payor or broker uses a single substitute form for both certifications, which does not follow the Form W–9 format, the form must contain an instruction to the payee that he must strike out the language certifying that the payee is not subject to backup withholding due to notified payee underreporting if he has been notified that he is subject to backup withholding due to notified payee underreporting, and the payee has not received a notice from the Internal Revenue Service advising him that backup withholding has terminated. If the payor or broker requires that the payee make the certification on a substitute form provided by the payor, the payor or broker may refuse to accept certifications (including certifications provided on Form W–9) that are not made on the form or forms provided by the payor or broker. If the payor or broker refuses to accept the form provided by the payee, the payor or broker then must comply with the pertinent portions of § 31.3452(f)–1(b)(2) of the Income Tax Regulations related to the procedures that a payor must follow upon receipt of an unacceptable form.

Q–37. With respect to reportable interest or dividends that are paid on an account opened or an instrument acquired on or after January 1, 1984, if a payee fails to certify, under penalties of perjury, (1) that the number furnished is his correct taxpayer identification number, and (2) that he is not subject to backup withholding due to notified payee underreporting, what action is a payor required to take?

A–37. A payor is required to withhold 20 percent of any reportable interest or dividend payment on such an account or instrument if either of the certifications specified is not provided. See A–4 of § 35a.9999–1 and the answers under § 35a.9999–3 beginning with A–51 for the actions that a payor of an account or instrument that is not a pre-1984 account must take to exercise due diligence and thereby avoid a penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number.

Q–38. Is a payor ever required to withhold more than 20 percent of a payment?

A–38. No. Irrespective of how many conditions exist which cause backup withholding to apply, a payor is required to withhold only 20 percent of a payment until all of the conditions no longer apply.

Q–39. Is a payor required to send a notice to the payee when the payor commences backup withholding?

A–39. In general, no. However, a payor of a readily tradable instrument that is not acquired directly from the payor must notify the payee that backup withholding has commenced, or will commence. The notice must be sent to the payee not later than 15 days after the payor makes the first payment to the payee that is subject to backup withholding. The notice must explain the steps the payee must take to stop backup withholding. The text of this notice will be provided in a regulation to be issued in the near future.

Q–40. Do special rules apply to payments made with respect to readily tradable instruments?

A–40. Yes. Special backup withholding rules apply with regard to readily tradable instruments when (1) the payee did not acquire the instrument directly from the issuer of the instrument and (2) a broker does not hold the instrument as nominee for the payee (*i.e.*, in street name). Under the special rules, a payor is required to impose backup withholding only if (1) the payor does not receive the payee's taxpayer identification number, or (2) the payor is notified by a broker that the payee failed to make the required certifications (described in A–32) to the broker and the payee did not make the certifications to the payor. When the payee acquires the instrument directly from the issuer of the instrument or when a broker holds the instrument as nominee for the payee, the rules applicable to payors apply.

Q–41. What rules apply to brokers?

A–41. When a broker is a payor (*i.e.*, the broker holds the instrument in street name), the regular rules for payors apply. If a broker is not the payor with respect to an instrument, different rules apply to the broker depending on whether the payee's account with the broker is treated as a ''post-1983 account.''

A ''post-1983 account'' is any account other than an account established prior to January 1, 1984, through which, during 1983, the broker either bought or sold an instrument for the payee or acted as nominee for the payee. (Both the determinations of (1) whether an account or instrument is treated as a post-1983 account of the payor for purposes of the payor's due diligence requirements (see A–34) and (2) when backup withholding applies to an instrument are made without regard to whether the instrument is acquired through a post-1983 account of a broker.)

When a readily tradable instrument is acquired through a ''post-1983 account'' and the broker is not the payor of the instrument, the broker must (1) obtain the certifications (described in A–32) from the payee but only once with respect to each account, (2) furnish the payee's taxpayer identification number to the payor, and (3) notify the payor to impose backup withholding if the payee failed to make either of the required certifications to the broker. The broker is required to give the information required by clauses (2) and (3) of the prior sentence to the payor in connection with the transfer instructions for the acquisition. The notice under clause (3) shall state that: ''The [named payee] is subject to backup withholding under sections 3406(a)(1)(A), 3406(a)(1)(B), 3406(a)(1)(C), or 3406(a)(1)(D) of the Internal Revenue Code [circle whichever section applies].'' A magnetic media, machine readable, or other similar notice substantially to the same effect also may be employed. After the transfer instructions are transmitted, the broker is not required to seek a missing taxpayer identification number or missing certification or to give any further notices with regard to the acquisition of the instrument.

When a readily tradable instrument is acquired through an account that is not a ''post-1983 account'' and the broker is not the payor of the instrument, the broker's sole responsibility is to furnish the payee's taxpayer identification number to the payor (unless the broker has been notified that the payee is subject to backup withholding under section 3406 (a)(1)(B) or (a)(1)(C) of the Internal Revenue Code).

WINDOW TRANSACTIONS PRE-1984 INSTRUMENTS

Q–42. Is a payor required to exercise due diligence in soliciting the taxpayer identification number of a payee with respect to the following payments (''window transactions''): Redemptions of United States savings bonds, and payments upon interest coupons, commercial paper, and banker's acceptances?

A–42. No. The due diligence requirements do not apply to such payments. Thus, the certification requirements set forth in A–32 do not apply to such transactions. A payor is required to withhold 20 percent with respect to such payments only if the payee does not provide his taxpayer identification number to the payor. Payors remain obligated, however, to make an information return with respect to window transactions.

Q–42A. Is a payor on a pre-1984 instrument in a window transaction subject to a penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number with respect to that transaction?

A–42A. No. However, see A–42 in this section which provides, in part, that a payor is required to backup withhold if a payee fails to provide a taxpayer identification number (*i.e.*, there is a missing taxpayer identification number). See A–66 of § 35a.9999–3 for the actions that payors of post-1983 window transactions, as defined in A–42B, must take to avoid a penalty under section 6676(b).

POST-1983 INSTRUMENTS

Q–42B. Is a payor required to treat an instrument that is negotiated in a window transaction (as defined in A–42 of § 35a.9999–1 and A–9 of § 35a.9999–2) after

December 23, 1987, as an instrument acquired after December 31, 1983?

A–42B. Yes. A window transaction occurring on or after December 23, 1987, will be considered made with respect to an instrument acquired after December 31, 1983, regardless of when the instrument was issued by the payor or acquired by the payee. See A–66 of § 35a.9999–3 for the actions that payors must take to avoid a penalty under section 6676(b) with respect to a post-1983 window transaction.

Q–43. Will a payor be allowed to furnish an information return to the payee with respect to a window transaction at the time the obligation or instrument is presented?

A–43. Yes. A payor may furnish an information return to the payee at the time of the transaction or any time prior to January 31 of the year following the calendar year in which the transaction occurs. In general, however, the payor must provide information returns with respect to window transactions to the Internal Revenue Service on magnetic tape, in accordance with section 6011(e)(2) of the Internal Revenue Code, effective for transactions after December 31, 1983.

SEPARATE FORM 1099

Q–44. Is a payor of interest, dividends, or patronage dividends paid in 1983 required to send a separate official Form 1099 to a payee?

A–44. No. A payor of interest, dividends, or patronage dividends paid in 1983 is not required to send a separate official Form 1099 to a payee. A payor may satisfy his obligation to furnish the required statement to the recipient by sending the statement with other business correspondence to the payee, such as a monthly statement.

Q–45. Is a payor of interest, dividends, or patronage dividends paid after January 1, 1984, required to send a separate official Form 1099 to a payee?

A–45. Yes. For payments made in 1984 and subsequent years, a payor is required to provide an official Form 1099 to a payee either in a separate mailing or in person. Payors also may use a substitute Form 1099 which contains provisions substantially similar to those of the prescribed form if the payor complies with all revenue procedures relating to substitute Form 1099 in effect at the time.

Q–46. Is a payee required to attach Form 1099 to his tax return?

A–46. No.

MISCELLANEOUS

Q–47. In what manner is a payor required to remit to the Internal Revenue Service amounts withheld from any reportable payment?

A–47. A payor must deposit amounts withheld under the backup withholding provisions with a Federal Reserve Bank or an authorized financial institution in accordance with the deposit rules of § 31.6302(c)–1(a)(1)(i) of the Income Tax Regulations that apply to an employer with respect to employment taxes. The payor of a reportable payment may elect, however, in accordance with the instructions provided with Form 941, to deposit such amounts separately from social security taxes and income tax withheld from wages. Thus, a payor may treat amounts withheld under section 3406 separately from amounts withheld from wages for purposes of determining when to remit the withheld amounts from any reportable payment. If, however, the payor elects to aggregate the amount withheld from wages with the amounts withheld under section 3406, the payor may do so. Regardless of the manner in which the payor elects to treat the withheld amounts for purposes of determining the time within which such amounts are required to be deposited, a payor must report the amounts withheld under section 3406 on the same Form 941 that the payor uses to report the employment taxes deposited.

Q–48. May a payor refuse to open an account for, or issue an instrument to a person on or after January 1, 1984, if the person fails to furnish his taxpayer identification number to the payor under penalties of perjury?

A–48. Yes. If the payor refuses to open an account or issue an instrument because the person fails to provide his taxpayer identification number under penalties of perjury, the payor will not be in violation of the Internal Revenue Code. If, however, the payor allows a person who has not provided his taxpayer identification number under penalties of perjury to open an account or

acquire an instrument, the payor is required to impose backup withholding with respect to any interest or dividend payments thereafter made with respect to such account or instrument (unless the payee thereafter provides his taxpayer identification number certified under penalties of perjury). The payor is not permitted, however, to refuse to open an account or to issue an instrument if the payee fails to certify under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting. See A–4 of § 35a.9999–1 and the answers under § 35a.9999–3 beginning with A–51 for the actions that a payor of an account or instrument that is not a pre-1984 account or instrument must take to exercise due diligence and thereby avoid a penalty under section 6676(b) or filing an information return with a missing or an incorrect taxpayer identification number.

Q–49. May a payor treat a certificate respecting a taxpayer identification number as valid if it is signed by a person other than the payee?

A–49. In certain instances, yes. A certificate may be signed by any person who, under the pertinent portions of sections 6061, 6062, 6063, and 6065 of the Internal Revenue Code and the regulations thereunder, is authorized to sign a declaration under penalties of perjury on behalf of the payee.

Q–50. What procedures must a payor follow in order to demonstrate that it has exercised due diligence in furnishing the correct taxpayer identification number of a payee, as required in A–5?

A–50. A payor is not required to retain a copy of the communication sent to each individual payee or to prove that the communication was sent to a particular payee. Instead, payors must establish the existence of procedures that are reasonably calculated to insure that each person required to receive a mailing as prescribed in A–5, in fact received such mailing, and that the payor exercised reasonable care in processing responses to such mailings.

SPECIAL RULES FOR ACCOUNTS, INSTRUMENTS AND TRANSACTIONS OF FOREIGN PERSONS

Q–51. Is a payor required to send the mailing or mailings described in A–5 and A–6 to foreign persons?

A–51. Generally no. A payor is required to send the mailing or mailings described in A–5 and A–6 to any payee to whom the payor makes a payment that is subject to information reporting. Generally, a payment of interest to a foreign person is not subject to information reporting. See §1.6049–5 (b) (2) and (3) of the Income tax Regulations for the procedures to determine whether a payee of interest is a foreign person. See § 1.6042–3(b) (1), 2, and (3) and § 1.6044–3(c) of the Income Tax Regulations concerning exceptions from the information reporting requirements for payments of dividends and patronage dividends by and to certain foreign persons.

Q–52. Is a payor required to send the mailing or mailings described in A–5 and A–6 to foreign persons with respect to pre-1984 accounts and instruments if payments on those accounts and instruments would not have been reportable payments but for the fact that the foreign person failed to provide the penalty of perjury statement described in § 1.6049–5(b)(2)(iv) of the Income Tax Regulations?

A–52. A payor need not send the mailing or mailings described in A–5 and A–6 to a payee who has not previously provided the penalty of perjury statement described in § 1.6049–5(b)(2)(iv) of the Income Tax Regulations if (1) the payor sends a separate mailing to the payee on or before December 31, 1983, requesting the required penalty of perjury statement and (2) the payor has evidence in its records that the payee is a foreign person (provided that the payor has no actual knowledge that such evidence is false). If the payor has sent a nonseparate mailing on or before December 31, 1983, requesting the required penalty of perjury statement, the payor may send the separate mailing referred to in clause (1) on or before March 31, 1984. The separate mailing, whether sent in 1983 or 1984, must be by first-class mail, or by airmail if sent to

a foreign address, and must contain a notice describing the penalty of perjury statement set forth in §1.6049–5(b)(2)(iv) and advising the payee that backup withholding may commence if the statement is not provided. The payor also must provide a reply envelope and a form on which the payee may make the statement described in §1.6049–5(b)(2)(iv) under penalties of perjury. Neither the separate nor nonseparate mailing is required if the payor has received the required penalty of perjury statement from the payee.

The rules of A–18 and A–19 relating to a ''do not mail'' or ''stop mail hold'' instruction and to payees for whom the payor has no address, shall apply. The other evidence referred to in clause (2) above on which the payor may rely for treating a payee as a foreign person includes a written statement from the payee that he is neither a resident nor a citizen of the United States or an affidavit from an employee of the payor stating that he knows that, or the payee has represented orally that, he is a foreign person. The mere fact that the payee has provided an address outside the United States is insufficient evidence to establish that the payee is a foreign person for this purpose.

Q–53. Is a payor required to commence backup withholding on January 1, 1984, on payments with respect to accounts and instruments described in A–52 if the foreign person failed to provide the penalty of perjury statement described in §1.6049–5(b)(2)(iv) of the Income Tax Regulations?

A–53. The payor need not commence backup withholding with respect to such payments made before July 1, 1984, provided that the payor (1) made the separate mailing described in A–52 before December 31, 1983, or has made the nonseparate mailing described in A–52 before December 31, 1983, and sends a separate mailing to those payees who have not provided the required statement by March 31, 1984, and (2) has in its records the evidence described in A–52 that the payee is a foreign person.

Q–54. Do the backup withholding provisions apply to payments of interest within the United States by a payor that is an international organization or by a person acting in its capacity as a paying agent for such organization?

A–54. No, provided the international organization is in organization of which the United States is a member and which enjoys immunity or exemption from any liability or obligation to pay, withhold, or collect tax pursuant to an international agreement having full force and effect in the United States.

Q–55. Is a broker required to impose backup withholding with respect to transactions effected for pre-1984 accounts if the customer is an exempt foreign person who fails to provide the broker with the penalty of perjury statement described in §1.6045–1(g)(1) of the Income Tax Regulations?

A–55. With respect to such transactions effected before July 1, 1984, a broker is not required to impose backup withholding if (1) the broker sends a separate mailing to the customer on or before December 31, 1983, requesting the penalty of perjury statement described in §1.6045–1(g)(1) of the Income Tax Regulations and (2) the broker has evidence in his records that the customer is a foreign person (provided that the broker has no actual knowledge that such evidence is false). If the payor sent a nonseparate mailing on or before December 31, 1983, requesting the required penalty of perjury statement, the payor may send the separate mailing on or before March 31, 1984. The separate mailing, whether made in 1983 or 1984, must be by first-class mail, or by airmail if sent to a foreign address, and must contain a notice describing the required penalty of perjury statement and advising the customer that backup withholding may commence if the statement is not provided. The broker must also include in the mailing a reply envelope and provide a form on which the customer may make the required penalty of perjury statement. Neither the separate nor nonseparate mailing is required if the payor has received the penalty of perjury statement from the customer.

The rules of A–18 and A–19 relating to ''do not mail'' or a ''stop mail hold'' instructions, and to payees for whom the payor has no address shall apply. The other evidence referred in clause (1) above on which the broker may rely for treating a customer as as foreign person may include a written statement

from the customer that he is neither a resident nor a citizen of the United States or an affidavit from an employee of the broker stating that he knows that, or the customer has orally represented that, he is a foreign person. The mere fact that the customer has provided an address outside the United States is insufficient evidence to establish that the customer is a foreign person for this purpose.

NONASSESSMENT OF THE PENALTY BY ADMINISTRATIVE DISCRETION

Q–56. Is a payor of a pre-1984 account or instument who did not undertake the mailings in accordance with A–5 and A–6 and the related questions and answers on due diligence under this section liable for the penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number for all years in which the payor did not have a certified Form W–9 or acceptable substitute form from a payee?

A–56. Yes. The payor is liable for the penalty under section 6676(b) for each year the payor files an information return with a missing or an incorrect taxpayer identification number for a pre-1984 account or instrument if the payor has not exercised due diligence as described in A–5 and A–6 and in the related questions and answers on due diligence under this section or obtained a certified taxpayer identification number from the payee. However, in its administrative discretion the Internal Revenue Service will not impose the penalty on a payor for an information return filed for calendar years after 1987 if the payor makes or has made a separate mailing of the type described in A–5 (as applicable under such Q and A) on or before June 30, 1988, and makes or has made the nonseparate mailing described in A–5 (as applicable under such Q and A) in each year subsequent to the year of the separate mailing claimed as the basis for administrative relief. Such separate and nonseparate mailings must be made with respect to all pre-1984 accounts or instruments of payees to whom the payor will make a reportable payment in 1988 or a subsequent calendar year if such payees have not previously certified, under penalties of perjury, that the taxpayer identification number furnished to the payor is the payee's correct taxpayer identification number or established the payee's foreign status (under §1.6049–5(b)(2)(iv)) with respect to interest payments or under Q and A 36 of §35a.9999–3 with respect to dividend payments). If a reportable payment will not be made to a pre-1984 account or instrument in 1988, the mailing with respect to the account or instrument may be made, in the discretion of the payor, by (1) June 30, 1988, or (2) the later of October 1 of the calendar year in which the payment to the account or instrument is subsequently reportable or within 30 days after such reportable payment occurs.

A payor will not be ineligible for administrative relief under this Q/A–56 with respect to a calendar year (for those accounts for which mailings were made as described in this A–56) due to a failure to make a mailing with respect to a *de minimis* number of accounts. A *de minimis* number of accounts is the lesser of 5,000 accounts or one percent (or less) of the total number of accounts for which a mailing should have been made under this Q/A–56. In addition, a payor will not be ineligible for administrative relief with respect to a calendar year (for those accounts for which mailings were made as described in this A–56) due to an inadvertent failure to make a mailing for a few accounts that could not be located using reasonable care.

In its administrative discretion, the Internal Revenue Service will not impose the penalty under section 6676(b) on those *de minimis* accounts or on those accounts that could not be located using reasonable care in any calendar year for which a payor undertakes a mailing, as described in Q–5 in this section, with respect to *all* such accounts.

The rules described in A–5 and the related questions and answers on due diligence under this section shall apply, to the extent not inconsistent with this Q and A 56, as shall the rules described in A–8, A–9, A–10, A–11, A–12, A–14, A–15, and A–16. Further, the special rules in A–17, A–18, A–19, A–20, A–21, A–22, A–23, A–24, and A–25 also shall apply to the mailing described in A–56 of this section.

In order to receive administrative relief each year, a payor must make a written statement, under penalties of perjury, affirmatively showing to the satisfaction of the district director or the director of the Internal Revenue Service Center that the person otherwise liable for such penalty fulfilled the requirements of this paragraph. A payor should make the request from the Internal Revenue Service ninety days before the due date of the Form 8210. A payor will remain liable for any applicable penalties under section 6676(b) for years prior to 1988.

[T.D. 7916, 48 FR 45362, Oct. 4, 1983, as amended by T.D. 7922, 48 FR 53111, Nov. 25, 1983; T.D. 8163, 52 FR 44873, Nov. 23, 1987; T.D. 8248, 54 FR 14350, Apr. 11, 1989]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, § 35a.9999–1 was removed, 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.

§ 35a.9999–2 Questions and answers concerning due diligence and issues in connection with backup withholding.

The following questions and answers principally concern the backup withholding requirement with respect to reportable payments and the due diligence exception to the penalty on payors of reportable interest and dividend payments for failure to provide a payee's correct taxpayer identification number on certain information returns. These requirements are issued under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369):

DUE DILIGENCE

Q–1. If a payor of reportable interest or dividends does not send the mailing or mailings described in A–5 and A–6 of § 35a.9999–1 of the Temporary Employment Tax Regulations, issued under the Interest and Dividend Tax Compliance Act of 1983, T.D. 7916 (''§ 35a.9999–1''), to all payees who have not certified under penalties of perjury that their taxpayer identification numbers are correct, will a payor be considered to have exercised due diligence with respect to a payee to whom the payor sends the required mailing or mailings?

A–1. Yes. Due diligence applies on a payee-by-payee basis. For example, if a payor sends the separate mailing described in A–5 of § 35a.9999–1 by December 31, 1983, only to certain payees, the payor will be considered to have exercised due diligence with respect to the payees to whom the mailing was sent. However, the payor will not be considered to have exercised due diligence with respect to those payees to whom the payor did not send the required mailing or mailings.

A penalty for failure to provide a correct taxpayer identification number will not be imposed merely because the payor fails to send the required mailing or mailings. Rather, a penalty will be imposed only in the case of an information return filed by a payor of reportable interest or dividends if the required mailing or mailings were not sent to the payee and the payor fails to include a taxpayer identification number or includes an incorrect number on the return filed with respect to the payee.

Q–2. Does the due diligence standard apply to reportable payments other than reportable interest or dividends?

A–2. No. The due diligence standard does not apply to payments reportable under sections 6041, 6041A(a), 6045, or 6050A. Thus, payors of these other reportable payments are not required to send the mailings described in A–5 and A–6 of § 35a.9999–1.

Q–3. Do the rules of section 7503 of the Internal Revenue Code, regarding the time for performance of an act where the last day to perform the act falls on Saturday, Sunday, or a legal holiday, apply to the time limits for the mailings described in A–5, A–6, A–52, A–53, and A–55 of § 35a.9999–1?

A–3. Yes. For example, a mailing that must be sent on or before Saturday, December 31, 1983, will be considered timely if sent on or before Tuesday, January 3, 1984.

Q–4. Are trustees, custodians, or other fiduciaries subject to the due diligence standard?

A–4. The due diligence standard does not apply to a trustee, custodian, or other fiduciary, unless such person is a