

Internal Revenue Service, Treasury

§ 31.3406(g)-1

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 under-reporting);

(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]

§ 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

§ 31.3406(g)-2

26 CFR Ch. I (4-1-21 Edition)

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 non-resident alien individuals.* A payment of interest to a nonresident alien individual that is described in § 1.6049-8(a) of this chapter is not subject to withholding under section 3406 if the payor may treat the payee as a foreign beneficial owner or foreign payee under the rules of § 1.6049-5(b)(12). (For interest paid to a Canadian nonresident alien individual on or before December 31, 2012, see paragraph (d) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

(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 June 30, 2014, a payor is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States (as defined in § 1.6049-4(f)(16)) with respect to an offshore obligation (as defined in § 1.6049-5(c)(1)) or on gross proceeds from a sale effected outside the United States (as defined in § 1.6045-1(g)(3)(iii)), unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required on a reportable payment of an amount already withheld upon by a participating FFI (as defined in § 1.1471-1(b)(91)) or another payor in accordance with the withholding provisions under chapter 3 or 4 of the Code and the regulations under those chapters even if the payee is a known U.S. person. For example, a participating FFI is not required to backup withhold on a reportable payment allocable to its chapter 4 withholding rate pool (as defined in § 1.6049-4(f)(5)) of recalcitrant account holders (as described in § 1.6049-4(f)(11)), if withholding was applied to the payment (either by the participating FFI or another payor) pursuant to § 1.1471-4(b) or § 1.1471-2(a). For rules applicable to notional principal contracts, see

§ 1.6041-1(d)(5) of this chapter. For rules applicable to reportable payments made before July 1, 2014, see this paragraph (e) as in effect and contained in 26 CFR part 1 revised April 1, 2013.)

(f) *Effective/applicability date.* This section applies on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, revised April 1, 2016).

[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; T.D. 9136, 69 FR 41941, July 13, 2004; T.D. 9584, 77 FR 23395, Apr. 19, 2012; T.D. 9658, 79 FR 12808, Mar. 6, 2014; T.D. 9699, 79 FR 63812, Oct. 27, 2014; T.D. 9808, 82 FR 2121, Jan. 6, 2017]

§ 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.