

§ 31.3406(g)-2

26 CFR Ch. I (4-1-10 Edition)

as being made on September 30, 2005, and December 31, 2005. Accordingly, under paragraphs (f)(3) and (f)(4) of this section, Q must notify Customer A within four months of the beginning of each reporting period during which Q makes these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the September 30 payment, the notification must be furnished no later than October 31, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(v) Although Merchant X is not a qualified payee with respect to the payments that are treated as being made on September 30, 2005, and December 31, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is October 31, 2005, and the two-month period expires on December 31, 2005. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after December 31, 2005, unless Q has previously succeeded in validating Merchant X's TIN.

[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]

§ 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 sec-

tion 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 or has an obviously incorrect taxpayer identification number as defined in § 31.3406(h)-1(b)(2) must start withholding under section 3406(a)(1)(A) and § 31.3406(d)-1 on those accounts or instruments no later than sixty days following the date of the payor's acquisition of those accounts or instruments.

(g) *Certain gross proceeds.* No withholding under section 3406 is required with respect to any portion of the original issue discount on an instrument or security that is subject to withholding under section 3406 as reportable gross proceeds of such instrument or security under section 6045.

[T.D. 8637, 60 FR 66128, Dec. 21, 1995]

§ 31.3406(g)-3 Exemption while payee is waiting for a taxpayer identification number.

(a) *In general—(1) Backup withholding not required for 60 days.* If a payor has received an awaiting-TIN certificate from a payee with respect to an account or instrument receiving reportable interest or dividends as described in section 3406(b)(2), the payor must exempt the payee from withholding under section 3406(a)(1)(A) during the 60-day exemption period to the extent and in

the manner described in either paragraph (a) (2) or (3) of this section. The 60-day exemption period means the 60-consecutive-day period beginning with the day the payor receives the awaiting-TIN certificate. The payor must withhold under section 3406 beginning after the 60-day exemption period if the payor has not received a taxpayer identification number from the payee in the manner required in § 31.3406(d)-1. Regardless of whether the payee provides an awaiting-TIN certificate to a payor, the payor is required to withhold under section 3406(a)(1)(D) and § 31.3406(d)-2 on reportable interest or dividend payments as described in § 31.3406(d)-2 if the payee fails to certify, under penalties of perjury, that the payee is not subject to withholding due to notified payee underreporting as required in section 3406(a)(1)(D) and § 31.3406(d)-2.

(2) *Reserve method.* A payor must not withhold under section 3406 during the 60-day exemption period unless the payee (or a joint payee in the case of a joint account) desires to make a withdrawal of more than \$500 of either principal or interest from the account in any single transaction during the period. If a payee (or a joint payee) desires to make a withdrawal of more than \$500 during the 60-day exemption period, the payor is required under section 3406 to withhold 31 percent of all reportable payments made during the period and at the time of withdrawal unless the payee reserves 31 percent of all reportable payments made to the account during the period.

(3) *Alternative rule; 7-day grace period—(i) In general.* A payor who receives an awaiting-TIN certificate may elect, on a payee-by-payee basis or in general, to exempt reportable interest or dividend payments to a payee from withholding under section 3406 applying the rules in paragraph (a)(3) (ii) or (iii) of this section.

(ii) *Withholding on withdrawals.* Under this paragraph (a)(3)(ii), a payor must obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certification. In addition, the payor must withhold under section 3406 on any withdrawals made after the close of 7 business days