Internal Revenue Service, Treasury

§ 31.3406(b)(3)–5

(a) Royalty payments subject to backup withholding. A payment of a kind, and to a payee, that is required to be reported under section 6050N (relating to information reporting of payments of royalties) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) Amount subject to backup withholding. The amount described in paragraph (a) of this section subject to reporting under section 3406 is the amount subject to reporting under section 6050N. However, if the reportable payment is for an oil or gas interest, the amount subject to withholding is the net amount the payee receives (i.e., the gross proceeds less production-related taxes such as state severance taxes).

[T.D. 8637, 60 FR 66119, Dec. 21, 1995]

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) Royalty payments subject to backup withholding. A payment of a kind, and to a payee, that is required to be reported under section 6050N (relating to information reporting of payments of royalties) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) Amount subject to backup withholding. In general, the amount described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6050N. However, if the reportable payment is for an oil or gas interest, the amount subject to withholding is the net amount the payee receives (i.e., the gross proceeds less production-related taxes such as state severance taxes).

[T.D. 8637, 60 FR 66119, Dec. 21, 1995]

§ 31.3406(b)(3)–3 Reportable payments of payment card and third party network transactions.

(a) Payment card and third party network transactions subject to backup withholding. The gross amount of a reportable transaction that is required to be reported under section 6050W (relating to information reporting for payment card and third party network transactions) is a reportable payment for purposes of section 3406. See § 31.6051–4 for the requirement to furnish a statement to the payee if tax is withheld under section 3406.

(b) Amount subject to backup withholding. In general, the amount described in paragraph (a) of this section that is subject to withholding under

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section 3406 is the amount subject to reporting under section 6050W. In the case of payments made in settlement of third party network transactions, the amount subject to withholding under section 3406 is determined without regard to the exception for de minimis payments by third party settlement organizations in section 6050W(e) and the associated regulations.

(c) Time when payments are considered to be subject to backup withholding—(1) In general. In the case of a payment card or third party network transaction reportable under section 6050W, the obligation to withhold arises on the date of the transaction. A payor is not required, however, to satisfy its withholding liability until the time that payment is made.

(2) Example. The provisions of paragraph (c)(1) are illustrated by the following example:

Example. On Day 1, Customer A uses a payment card to purchase $100 worth of goods from Merchant B. Bank X, the merchant acquiring entity for B, is the party with the contractual obligation to make payment to B in settlement of the transaction. On Day 2, X, after deducting fees of $2, makes payment of $98 to settle the transaction for the sale of goods from B to A. Under paragraph (a)(6) of §1.6050W–1, X must report the amount of $100, the amount of the transaction on Day 1, without any reduction for fees or any other amount, as the gross amount of this reportable payment transaction on the annual information return filed under paragraph (a)(1) of §1.6050W–1. Under paragraph (c)(1) of this section, X's obligation, if any, to backup withhold arises on Day 1, the backup withholding obligation must be satisfied on Day 2, and the amount subject to backup withholding is $100 (the gross amount of the reportable payment transaction (as defined in paragraph (a)(6) of §1.6050W–1)).

(d) Backup withholding from an alternate source—(1) In general. A payor may not withhold under section 3406 from a source maintained by the payor other than the source with respect to which there exists a liability to withhold under section 3406 with respect to the payee. See section 3403 and §31.3403–1, which provide that the payor is liable for the amount required to be withheld regardless of whether the payor withholds.

(2) Exceptions for backup withholding when there are no funds available—(i) Backup withholding from an alternative source. In the event there are no funds available in the source with respect to which there exists a liability to withhold under section 3406 with respect to the payee, the payor may withhold under section 3406 from another source maintained by the payor with the payee. The source from which the tax is withheld under section 3406 must be payable to at least one of the persons listed on the account subject to withholding. If the account or source is not payable exclusively to the same person or persons listed on the account subject to withholding under section 3406, then the payor must obtain a written statement from all other persons to whom the account or source is payable authorizing the payor to withhold under section 3406 from the alternative account or source. A payor that elects to withhold under section 3406 from an alternative source may determine the account or source from which the tax is to be withheld, or may allow the payee to designate the alternative source.

(ii) Deferral of withholding. If the payor cannot locate, with reasonable care (following procedures substantially similar to those set forth in §31.3406(d)–5(c)(3)(ii)(A) and (B)), an alternative source of cash from which the payor may satisfy its withholding obligation pursuant to paragraph (d)(2)(i) of this section, the payor may defer its obligation to withhold under section 3406 until the earlier of—

(A) The date on which cash, in a sufficient amount to satisfy the obligation in full, is deposited in the account subject to withholding under section 3406; or

(B) The close of the fourth calendar year after the obligation arose.

(iii) Termination of obligation to backup withhold. If, at the close of the fourth calendar year after the backup withholding arose, the payor has not located an alternative source of cash from which the payor may satisfy its withholding obligation, and sufficient cash to satisfy the obligation in full has not been deposited in the account subject to withholding under section 3406, then the obligation to backup withhold terminates at the close of the fourth calendar year.
§ 31.3406(c)–1

(a) Overview. Withholding under section 3406(a)(1)(C) applies to any reportable interest or dividend payment (as defined in section 3406(b)(2)) made with respect to an account of a payee if the Internal Revenue Service or a broker notifies a payor under paragraph (c)(1) or (2) of this section that the payee is subject to withholding due to notified payee underreporting (as defined in paragraph (b)(1) of this section), and the payor is required under paragraph (c)(3) of this section to identify that account. After receiving the notice and identifying accounts, the payor must notify the payee, in accordance with paragraph (d) of this section, that withholding due to notified payee underreporting has started. Paragraph (e) of this section describes the period for which withholding due to notified payee underreporting is required. Paragraph (f) of this section provides rules concerning notices that the Internal Revenue Service will send to a payee on which the payor customarily pays or credits interest, the payor may assume that the period for which the interest is paid is the payor’s customary period for paying or crediting interest. (2) Special aggregation rule for reportable interest and dividends. If a payor maintains records that reflect multiple holdings of one payee and the payor makes an aggregate payment of reportable interest or dividends (as defined in section 3406(b)(2)) with respect to those multiple holdings (such as a dividend check that reflects payment on all stock owned by the payee), the payor must annualize the aggregate payment.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(e) Effective/applicability date. The provisions of this section apply to amounts paid after December 31, 2011.

[T.D. 8637, 60 FR 66119, Dec. 21, 1995]