

(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 sec-

tion 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 after the date the awaiting-TIN certification is received and before the earlier of the date that the payor receives a certified taxpayer identification number from the payee, the date the account is closed (in which case the payor must withhold on any reportable payment made at the time the account or relationship is closed), or the date withholding under section 3406 starts on all reportable payments made to the account, instrument, or relationship. All cash withdrawals in an amount up to the reportable payments made from the day after the date of receipt of the awaiting-TIN certification to the date

of withdrawal are treated as reportable payments.

(iii) *Withholding regardless of withdrawals.* Under this paragraph (a)(3)(iii), a payor must start withholding under section 3406 on the account not later than 7 business days after the date the payor receives the awaiting-TIN certification on reportable payments thereafter made to the account (whether or not the payee makes a cash withdrawal). The payor must withhold under section 3406 until the earlier of the date the payor receives a certified taxpayer identification number from the payee, the date the account is closed, or the date withholding under section 3406 starts on all reportable payments made to the account, instrument, or relationship. The payor must obtain a certified taxpayer identification number from the payee within 60 days after the date that the payor receives the awaiting-TIN certificate or undertake a mailing each year soliciting the certified taxpayer identification number from the payee until the earlier of the calendar year that the certified taxpayer identification number is received, or the calendar year in which the account is closed. However, if the account is closed in December of a calendar year, the mailing must be made after the account is closed and before January 31 of the subsequent calendar year.

(b) *Special rule for readily tradable instruments.* The 60-day awaiting-TIN exemption described in paragraph (a)(1) of this section applies to payments made with respect to readily tradable instruments only if the payee provides an awaiting-TIN certificate directly to the payor. If a broker acquires a readily tradable instrument through a post-1983 brokerage account (as described in § 31.3406(d)-1(c)(2)) for a payee who has no taxpayer identification number, the broker must advise the payor as required in § 31.3406(d)-4(a)(1) that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether the payee provides an awaiting-TIN certificate to the broker. Once a payor is notified by a broker that a payee failed to provide a taxpayer identification number in the required manner, or that the payee is subject to withholding under

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section 3406(a)(1) (B) or (C), the payor must impose withholding under section 3406 for the appropriate period described in § 31.3406(e)-1.

(c) *Exceptions*—(1) *In general.* The 60-day awaiting-TIN exemption described in paragraph (a) of this section does not apply to—

(i) Window transactions (as defined in § 31.3406(b)(2)-3(b));

(ii) Redemptions of bearer obligations that are subject to reporting under section 6045; or

(iii) Other amounts that are subject to reporting under section 6045 (except as described in paragraph (c)(2) of this section).

(2) *Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.* If a broker's customer does not provide a taxpayer identification number to the broker, and the broker effects a sale that is subject to reporting under section 6045 (other than a redemption of a bearer obligation), § 31.3406(d)-3(b) applies, whether or not the sale is pursuant to an instruction by electronic transmission, provided the customer furnishes an awaiting-TIN certificate to the broker before the sale. For purposes of this paragraph (c)(2), the 30-day period provided in § 31.3406(d)-3(b) is a 60-day period.

(d) *Awaiting-TIN certificate.* A payee qualifies for the 60-day awaiting-TIN exemption provided in paragraph (a) of this section if the payee furnishes a written statement to the payor, signed under penalties of perjury, that the payee has not been issued a taxpayer identification number, that the payee has applied for a taxpayer identification number or intends to apply for a number in the near future, and that the payee understands that if the payee does not provide a number to the payor within 60 days, the payor is required under section 3406 to withhold 31 percent of any reportable payment thereafter made to the payee until the payor receives a number, and 31 percent of a withdrawal to the extent of reportable payments made to the payee during the 60-day period, as described in paragraph (a) of this section. Language that is substantially similar to the awaiting-TIN certification on Form W-

9 will satisfy the requirements of this paragraph (d).

(e) *Form for awaiting-TIN certificate.* A payor may use Form W-9 for the awaiting-TIN certificate, or a payor may include language that is substantially similar to the awaiting-TIN certification on Form W-9 in any other document of the payor. See § 31.3406(h)-3, which provides that Form W-9 is the prescribed form but permits use of substitute forms, and specifies the length of time the payor is required to retain the form. If Form W-9 is used, the payee should write "Applied For" in the space reserved for the taxpayer identification number.

[T.D. 8637, 60 FR 66129, Dec. 21, 1995]

§ 31.3406(h)-1 Definitions.

(a) *In general.* For purposes of section 3406 and the regulations thereunder, the definitions of this section apply.

(b) *Taxpayer identification number*—(1) *In general.* *Taxpayer identification number* means the identifying number assigned to a person under section 6109 (relating to identifying numbers, generally a nine-digit social security number for an individual and a nine-digit employer identification number for a nonindividual, e.g., a corporation, partnership, trust, or estate). An obviously incorrect number is not considered a taxpayer identification number. See § 31.6011(b)-2 and § 301.6109-1 of this chapter for provisions relating to obtaining a taxpayer identification number.

(2) *Obviously incorrect number.* *Obviously incorrect number* means a number that does not contain nine digits or a number that includes an alpha character as one of the nine digits.

(c) *Broker.* *Broker* is defined in section 6045(c)(1) and § 1.6045-1(a)(1) of this chapter. If there could be more than one broker with respect to any acquisition, only the broker having the closest contact (as determined under 1.6045-1(c)(3)(iii) and (iv) of this chapter) with the payee is treated as a broker. In the case of any instrument, the term *broker* does not include any person who is the payor with respect to the instrument as described in § 31.3406(a)-2.

(d) *Readily tradable instrument.* *Readily tradable instrument* means—