§ 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 406, 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.
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amount of a reportable gambling win-
ing 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 win-
ing (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 wa-
gered. See §7.6041–1 of this chapter to
determine whether a winning from
bingo, keno, or slot machines is a re-
portable 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 re-
spect 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 acquisi-
tion of accounts or instruments. A payor
who acquires pre-1984 accounts or in-
struments 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 with-
holding under section 3406(a)(1)(A) and
§31.3406(d)–1 on those accounts or in-
struments no later than sixty days fol-
lowing the date of the payor's acquisi-
tion of those accounts or instruments.

(g) Certain gross proceeds. No with-
holding under section 3406 is required
with respect to any portion of the
original issue discount on an instru-
ment or security that is subject to
withholding under section 3406 as re-
portable gross proceeds of such instru-
ment or security under section 6045.

(h) Certain payments made by govern-
ment entities. A government entity that
is required to withhold both on report-
able payments pursuant to section
3406(a) and on certain payments pursu-
ant to section 3402(t) must comply with
the withholding requirements of sec-
tion 3406, and not section 3402(t), for
each payment to which both types of
withholding would apply. Pursuant to
section 3402(t)(2)(D), withholding under
section 3402(t) does not apply to a given
payment if amounts are being withheld
under section 3406 for that payment. If
a government entity fails to withhold
as required under section 3406, the pay-
ment will not be deemed to be subject
to withholding under another provision
of the Internal Revenue Code for pur-
poses of this paragraph (h). Thus, even
if the government entity withholds on
such payment pursuant to section
3402(t), it will remain liable for the
amount required to be withheld under
section 3406.

(i) Effective/applicability date. Para-
graph (h) of this section relating to
certain payments made by government
entities applies to payments made by
government entities under section
3402(t) made after December 31, 2012.

[T.D. 8637, 60 FR 66128, Dec. 21, 1995, as
amended by T.D. 9524, 76 FR 26601, May 9,
2011]

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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 ac-
count or instrument receiving report-
able interest or dividends as described
in section 3406(b)(2), the payor must ex-
empt 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 para-
graph (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 await-
ing-TIN certificate. The payor must
withhold under section 3406 beginning
after the 60-day exemption period if the
payor has not received a taxpayer iden-
tification number from the payee in
the manner required in §31.3406(d)–1.
Regardless of whether the payee pro-
vides an awaiting-TIN certificate to a
payor, the payor is required to with-
hold under section 3406(a)(1)(D) and

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