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the broker's records. If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property must be assumed for this purpose to have a basis of zero.

(ii) *Time of backup withholding*. The determination of whether a short seller is subject to withholding under section 3406 must be made on the date of the initiation or closing, as the case may be, or on the date that the initiation or closing, as the case may be, is entered on the broker's books and records.

(5) *Fractional shares*. A broker is not required to withhold under section 3406 with respect to a sale of a fractional share of stock resulting in less than $20 of gross proceeds (as described in § 1.6045–1(c)(3)(x) of this chapter).

[T.D. 8637, 60 FR 66118, Dec. 21, 1995, as amended by T.D. 9010, 67 FR 48760, July 26, 2002]

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) *Payments subject to backup withholding*. A payment of a kind, and to a payee, that is required to be reported under section 6050A (relating to information reporting by certain fishing boat operators) 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 withholding under section 3406 is the amount subject to reporting under section 6050A, but only to the extent the amount is paid in money and represents a share of the proceeds of the catch.

[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)–5 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 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: