

regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* Except as provided in paragraph (b) of this section, a payor or broker is not permitted to—

(1) Close an account (or instrument) of a payee solely because that payee (or the account of a payee) is subject to withholding under section 3406(a)(1)(A), (B), (C), or (D);

(2) Refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting);

(3) Use information obtained under section 3406 (including a payee's failure or inability to certify that the payee is not subject to withholding due to notified payee underreporting or the fact that the account is subject to withholding), surcharge an account (i.e., charge an account more than the fee charged a similar account that was not subject to withholding under section 3406), or use that information to determine whether to open or close an account, whether to issue or redeem an instrument, or whether to extend credit to the payee.

[T.D. 8637, 60 FR 66127, Dec. 21, 1995]

§ 31.3406(g)-1 Exception for payments to certain payees and certain other payments.

(a) *Exempt recipients*—(1) *In general.* A payor of any reportable payment (as defined in section 3406(b)) must not withhold under section 3406 if the payee is—

(i) An organization exempt from taxation under section 501(a) or an individual retirement account;

(ii) The United States or any wholly owned agency or instrumentality thereof;

(iii) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;

(iv) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the

foregoing (as defined in regulations under section 892); or

(v) An international organization or any wholly owned agency or instrumentality thereof (as defined in section 7701(a)(18)).

(2) *Nonexclusive list.* Paragraph (a)(1) of this section does not prescribe an exclusive list of payees that are exempt from information reporting and also are exempt from withholding under section 3406.

(b) *Determination of whether a person is described in paragraph (a)(1) of this section.* The determination of whether a person is a payee described in paragraph (a)(1) of this section must be made as provided in the applicable provisions of section 6049 and the regulations issued thereunder. A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of section 6049, may require a payee, otherwise not required to file a certificate regarding its exempt status, to file a certificate and may treat a payee who fails to file the certificate as a person who is not an exempt recipient. See § 31.3406(h)-3 for a description of the Form W-9 or a substitute form prescribed under section 3406 for claiming exempt status.

(c) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in section 3406(b)(1)) may, but is not required to, withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1996, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

(d) *Reportable payments made to non-resident alien individuals.* A payment of interest to a nonresident alien individual that is described in § 1.6049-8(a)

of this chapter is not subject to withholding under section 3406 if the payor may treat the payee as a foreign beneficial owner or foreign payee under the rules of § 1.6049-5(b)(12). (For interest paid to a Canadian nonresident alien individual on or before December 31, 2012, see paragraph (d) of this section as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* For reportable payments made after December 31, 2000, a payor is not required to backup withhold under section 3406 on a reportable payment that qualifies for the documentary evidence rule described in § 1.6049-5(c)(1) or (4) of this chapter, whether or not documentary evidence is actually provided to the payor, unless the payor has actual knowledge that the payee is a United States person. Further, no backup withholding is required for payments upon which a 30-percent amount was withheld by another payor in accordance with the withholding provisions under chapter 3 of the Internal Revenue Code and the regulations under that chapter. For rules applicable to notional principal contracts, see § 1.6041-1(d)(5) of this chapter.

(f) *Special rule for certain payment card transactions—(1) In general.* No withholding under section 3406 is required for a reportable payment made through a payment card organization if the payment is made on or after January 1, 2005, the organization is a Qualified Payment Card Agent (QPCA), and—

(i) The payee is a qualified payee (as defined in paragraph (f)(2)(vi) of this section) with respect to the payment; or

(ii) The cardholder/payor made the purchase to which the payment relates no later than two months after the last date prescribed under paragraph (f)(3) of this section for furnishing the QPCA's first notification to the cardholder/payor that the payee is not a qualified payee.

(2) *Definitions—(i) Payment card defined.* For purposes of this section, a *payment card* is a card (or an account) issued by a payment card organization, or one of its members, affiliates, or li-

censees, to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

(ii) *Payment card organization defined.* For purposes of this section, a *payment card organization* is an entity that sets the standards and provides the mechanism, either directly or indirectly through members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization acting directly or indirectly through its members, affiliates, or licensees generally provides such a payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards for payment card transactions.

(iii) *Payment card transaction defined.* For purposes of this section, a *payment card transaction* is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment.

(iv) *Cardholder/payor defined.* For purposes of this section, a *cardholder/payor* is the person that agrees to make payments through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder/payor.

(v) *Qualified Payment Card Agent (QPCA) defined.* For purposes of this section, a *Qualified Payment Card Agent (QPCA)* is a payment card organization that has a current QPCA determination from the Internal Revenue Service (IRS) under applicable procedures (see § 601.601(d)(2) of this chapter).

(vi) *Qualified payee defined.* For purposes of this section, a payee is a *qualified payee* with respect to a reportable payment if—

(A) At the time the QPCA makes the payment, the QPCA has obtained the payee's TIN and the payee's TIN has

been validated through the IRS TIN Matching Program; or

(B) The QPCA makes the payment during the six-month period beginning on the date on which the QPCA first makes a payment to the payee.

(3) *Notification of payee status.* In the case of a payment to a payee other than a qualified payee as defined in paragraph (f)(2)(vi) of this section with respect to the payment, the QPCA acting directly or indirectly through its members, affiliates, or licensees must notify the payor that the payee is not a qualified payee. The notification must be furnished during the four-month period beginning on the date on which the QPCA makes the payment. Notification may be provided in a quarterly or other regular report of payee data to the cardholder/payor and may consist of an asterisk, footnote, or other mark next to the payee's name, with the text of the notification at the bottom of the page or at the end of the list of payee data. Notification by the QPCA that a payee is not a qualified payee does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of section 3406(a)(1)(B) and § 31.3406(d)-5.

(4) *Time of payment.* A QPCA that makes reports to cardholders on the basis of a calendar quarter or any shorter period (the reporting period) may choose to treat all payments made during the reporting period as being made on the last day of the period for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section. If the QPCA treats payments as being made on the last day of a reporting period, the six-month period in paragraph (f)(2)(vi) of this section and the four-month period in paragraph (f)(3) of this section are treated as beginning on the first day of the reporting period in which the QPCA makes the payment that would otherwise begin the six-month or four-month period.

(5) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples, assume that Q meets all requirements and fulfills all duties necessary to obtain a QPCA determination from the IRS. The examples are as follows:

Example 1. (i) Q, a QPCA, enrolls Merchant X on January 20, 2005, to accept the Q pay-

ment card as a means for obtaining payment. (The results in this example are the same whether the acts attributed to Q are performed by Q itself or by a member, affiliate, or licensee of Q.) At the time of enrollment, Q obtains Merchant X's taxpayer identification number (TIN). Merchant X is a sole proprietor engaged in the trade or business of repairing automobiles and trucks. Q's first payment to Merchant X for purchases through the payment card is made on January 31, 2005.

(ii) On March 1, 2005, Q issues a Q payment card to Customer A to use for the purchase of goods or services in the course of its trade or business from merchants that accept the Q payment card. During 2005, Customer A uses Q payment card to purchase repairs to A's vehicles from Merchant X on April 29, 2005, July 29, 2005, and December 19, 2005. Q makes payments for the repairs on May 2, 2005, August 1, 2005, and December 20, 2005. Q provides reports of payee data to each of its cardholders, including Customer A, on the 15th of April, July, October, and January for the quarter ending on the last day of the preceding month, but does not choose to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(iii) On March 15, 2005, Q attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program. On March 20, 2005, the IRS notifies Q that the name/TIN furnished by Merchant X does not match IRS data. On June 15, 2005, and September 15, 2005, Q makes further unsuccessful attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program.

(iv) Under paragraph (f)(2)(vi)(B) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 31, 2005 (the date of Q's first payment to Merchant X), and ending on July 30, 2005. Accordingly, the payment on May 2, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(v) Q has not validated Merchant X's TIN at the time of the payments on August 1, 2005, and December 20, 2005. Accordingly, under paragraph (f)(3) of this section, Q must notify Customer A within four months of each of these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the August 1 payment, the notification must be furnished no later than November 30, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(vi) Although Merchant X is not a qualified payee with respect to the payments on August 1, 2005, and December 20, 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 November 30, 2005, and the two-month period expires on January 30, 2006. 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 January 30, 2006, unless Q has previously succeeded in validating Merchant X's TIN.

Example 2. (i) Assume the same facts as in example (1) except that Q chooses to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(ii) The payment Q makes on January 31, 2005, is treated under paragraph (f)(4) of this section as being made on March 31, 2005. Similarly, the payments made on May 2, 2005, August 1, 2005, and December 20, 2005, are treated as being made on June 30, 2005, September 30, 2005, and December 31, 2005.

(iii) Under paragraphs (f)(2)(vi)(B) and (f)(4) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 1, 2005 (the beginning of the reporting period during which Q makes the first payment to Merchant X), and ending on June 30, 2005. Accordingly, the payment treated as made on June 30, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(iv) Q has not validated Merchant X's TIN at the time of the payments that are treated 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; T.D. 9584, 77 FR 23395, Apr. 19, 2012]

§ 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 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