

## Section 3406.—Backup Withholding

26 CFR 31.3406(j)-1: Taxpayer Identification Number (TIN) matching program.

T.D. 8721

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 31 and 35a

#### Taxpayer Identification Number (TIN) Matching Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations on the establishment of Taxpayer Identification Number (TIN) matching programs and removes the temporary regulations on the establishment of a TIN matching program. These regulations reflect changes to the law made by the Interest and Dividend Tax Compliance Act of 1983. They affect payors, brokers, and payees of certain reportable payments and provide guidance necessary to comply with the law.

DATES: These regulations are effective June 18, 1997.

FOR FURTHER INFORMATION CONTACT: Renay France, (202) 622-6232 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

#### *Background*

On March 22, 1994, the Internal Revenue Service (IRS) published proposed (IA-8-92[1994-1 C.B. 795]) and temporary regulations (T.D. 8523 [1994-1 C.B. 271]) in the **Federal Register** (59 FR 13470 and 13455, respectively) for the establishment of a TIN matching program (the matching program) by the Commissioner. The proposed regulations would allow payors to check the accuracy of a name/TIN combination before filing the related information return. The proposed regulations solicited written comments and set a date for a public hearing on the regulations. No one requested to speak at the hearing; therefore, none was held.

The proposed regulations provide that a payor's decision whether to participate in the matching program and any matching details received through the match-

ing program are not taken into account in determining whether a payor has reasonable cause under section 6724(a) that will avoid a penalty under section 6721(a) for the failure to file a correct information return or under section 6722 for the failure to furnish a correct payee statement. Several commentators suggested that if a payor submits a name/TIN combination under the matching program and is not informed by the IRS that the TIN is incorrect, the payor will have established reasonable cause under section 6724(a) should the IRS later determine that the same TIN filed on a subsequent information return is incorrect. In response to the comment, the final regulations provide that neither a payor's nonparticipation in a matching program nor the results obtained from participating in a matching program will adversely affect the payor's reasonable cause defense and that the extent to which a payor may establish reasonable cause by participating in a TIN matching program will be set forth in the guidance establishing the program.

Additional comments suggested modification of IRS information returns (Forms 1099). A modified form would allow a payor to indicate that it contacted the IRS for matching of the name/TIN combination on the information return and was not informed that the name/TIN combination was incorrect. The IRS will consider the feasibility of adopting this suggestion when a TIN matching program is established.

#### *The Prototype*

On May 9, 1994, the IRS instituted a two-year prototype of an online TIN matching program to test its operational feasibility on a nationwide basis. The prototype permitted a maximum of 200 payors of reportable payments, as defined in section 3406(b)(1), to volunteer to participate in the prototype and have their payees' name/TIN combinations matched with records of the IRS prior to filing the related information return. The prototype operated for only eleven months; a fire destroyed the computer system dedicated to this project. During the operation of the prototype approximately 120 payors made 55,795 name/TIN inquiries.

Due to fiscal constraints, the IRS has no current plans to implement a TIN matching program that will be available to all payors of reportable payments and

has no current plans to replace the destroyed computer system needed to implement an online TIN matching program.

#### *Explanation of Provisions*

The final regulations permit the IRS to establish varied matching programs by published guidance as circumstances warrant. In general, under a matching program, a participating payor of a reportable payment (as defined in section 3406(b)(1) of the Internal Revenue Code) may, prior to filing an information return, contact the IRS concerning the TIN furnished by a payee. Upon receiving the inquiry, the IRS will inform the payor whether or not the name/TIN combination furnished matches any name/TIN combination maintained by the IRS. (Informing a payor of a nonmatch will not constitute a notice to commence backup withholding under section 3406(a)(1)(B) due to an incorrect name/TIN combination.) If the name/TIN combination does not match, the payor has the opportunity to contact the payee for correction before filing an information return, thus reducing the likelihood that the payor will be notified to start backup withholding under section 3406(a)(1)(B). In order to assist a payor to obtain correct name/TIN combinations, a particular matching program may categorize nonmatching name/TIN combinations. For example, the matching program may indicate that the TIN is assigned to another name in the data base being used or that the TIN is not assigned in the data base being used.

Pursuant to the authority contained in the final regulations, the IRS will implement a TIN matching program for federal agencies. This program will allow federal agencies to request that the IRS match the name/TIN combinations of vendors to whom the agencies make payments reportable under section 6041. The operational details of this matching program are set forth in Revenue Procedure 97-31, appearing in the Internal Revenue Bulletin 1997-26, dated June 30, 1997.

#### *Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined

that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the IRS submitted the notice of proposed rulemaking preceding these regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### *Drafting Information*

The principal author of these regulations is Renay France, Office of the Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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#### *Adoption of Amendments to the Regulations*

Accordingly, 26 CFR parts 31 and 35a are amended as follows:

#### **PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Paragraph 1. The authority citation for part 31 is amended by adding the following entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*  
Section 31.3406(j)-1 also issued under 26 U.S.C. 3406(i). \* \* \*

Par. 2. Section 31.3406(j)-1 is added to subpart E to read as follows:

*§ 31.3406(j)-1 Taxpayer Identification Number (TIN) matching program.*

(a) *The matching program.* Under section 3406(i), the Commissioner has

the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see § 601.601-(d)(2) of this chapter) or other appropriate guidance the scope of and the terms and conditions of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined under section 3406(b)(1), a payor of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the payor whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program.

(b) *Notice of incorrect TIN.* No matching details received by a payor through a matching program will constitute a notice regarding an incorrect name/TIN combination under § 31.3406(d)-5(c) for purposes of imposing backup withholding under section 3406(a)(1)(B).

(c) *Application of section 3406(f).* The provisions of section 3406(f), relating to confidentiality of information, apply to any matching details received by a payor through the matching program. A payor may not take into account any such matching details in determining whether to open or close an account with a payee.

(d) *Reasonable cause.* The IRS will not use either a payor's decision not to participate in an available TIN matching program or the results received by a payor from participation in a TIN matching program implemented under the authority of this section as a basis to assert that the payor lacks reasonable cause under section 6724(a) for the

failure to file an information return under section 6721 or to furnish a correct payee statement under section 6722. If the establishment of reasonable cause may be relevant to a substantial number of the participants in a TIN matching program implemented under the authority of this section, the extent to which, if any, a payor may establish reasonable cause by participating in the TIN matching program will be set forth in the guidance establishing the program.

(e) *Definition of account.* *Account* means any account, instrument, or other relationship with a payor and with respect to which a payor has made or is likely to make a reportable payment as defined in section 3406(b)(1).

(f) *Effective date.* The provisions of this section are effective on and after June 18, 1997.

#### **PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983**

Par. 3. The authority citation for part 35a is amended by removing the entry for § 35a.3406-3 to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

#### **§ 35a.3406-3 [Removed]**

Par. 4. Section 35a.3406-3 is removed.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Donald C. Lubick,  
*Acting Assistant Secretary of the  
Treasury.*

(Filed by the Office of the Federal Register on June 18, 1997, 8:45 a.m., and published in the issue of the Federal Register for 62 F.R. 33008)