

## **Section 3406.—Backup Withholding**

*26 CFR 31.3406(j)–1T: Taxpayer Identification Number (TIN) matching program (temporary).*

**T.D. 9041**

### **DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 31**

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

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under section 3406 relating to the IRS Taxpayer Identification Number (TIN) Matching Program. These final and temporary regulations affect payors, and their authorized agents, and provide guidance necessary to comply with the law. The text of the temporary regulations also serves as the text of

the proposed regulations (REG–116641–01) set forth on page 518 of this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective January 31, 2003.

*Applicability Date:* For dates of applicability, see §§ 31.3406(j)–1(f) and 31.3406(j)–1T(f).

**FOR FURTHER INFORMATION CONTACT:** Donna Welch at (202) 622–4910.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

This document contains amendments to the Employment Tax Regulations (26 CFR part 31) relating to the IRS TIN Matching Program.

Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) in certain situations, including if (1) the payee fails to furnish his TIN to the payor as required or (2) the Secretary notifies the payor that the

TIN furnished by the payee is incorrect. Section 3406(i) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 3406.

Regulations under section 3406(i) provide that the Commissioner has the authority to establish TIN matching programs through revenue procedures or other appropriate guidance. Under the regulations, a payor participating in a TIN matching program may, before filing information returns with respect to reportable payments, contact the IRS with respect to the TIN furnished by the payee. The regulations provide that the IRS will inform the payor whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained for the TIN matching program.

Pursuant to the authority in the regulations, the IRS issued Rev. Proc. 97-31, 1997-1 C.B. 703, and implemented a TIN matching program for Federal agency payors. The IRS is now issuing a second revenue procedure pursuant to that authority (as amended by these temporary regulations). This revenue procedure will expand the scope of the IRS TIN Matching Program to allow all payors (and not merely Federal agency payors), as well as payors' authorized agents, to participate in TIN matching. In addition, the IRS and the Treasury Department expect to issue additional published guidance that will allow payment card organizations to act on behalf of cardholder/payors for purposes of soliciting, collecting, and validating merchant/payees' names and TINs through TIN matching if certain requirements are met.

### Explanation of Provisions

These regulations specifically authorize a payor's authorized agent to participate in TIN matching by providing that, for purposes of the TIN matching program, the term *payor* includes an agent designated by the payor to participate in TIN matching on behalf of the payor.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking (REG-116641-01) published in this issue of the Bulletin. Pursuant to section 7805(f), the temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

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### Amendments to the Regulations

Accordingly, 26 CFR part 31 is 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 an entry in numerical order to read in part as follows:

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

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

Par. 2. Section 31.3406(j)-1 is amended by revising paragraphs (a) and (f) to read as follows:

(a) [Reserved]. For further guidance, see § 31.3406(j)-1T(a).

\* \* \* \* \*

(f) [Reserved]. For further guidance, see § 31.3406(j)-1T(f).

Par. 3. Section 31.3406(j)-1T is added to read as follows:

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

(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 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 in 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. For purposes of this section, the term *payor* includes an agent designated by the payor to participate in TIN matching on the payor's behalf.

(b) through (e) [Reserved]. For further guidance, see § 31.3406(j)-1(b) through (e).

(f) *Effective date.* The provisions of this section are applicable on or after June, 18, 1997, except the last sentence in paragraph (a) of this section which is applicable on January 31, 2003. The applicability of this section expires on January 30, 2006.

David A. Mader,  
*Acting Deputy Commissioner of  
Internal Revenue.*

Approved January 17, 2003.

Pamela F. Olson,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on January 30, 2003, 8:45 a.m., and published in the issue of the Federal Register for January 31, 2003, 68 F.R. 4922)