

Procedures to avoid backup withholding

Revenue Procedure 2014-43

SECTION 1. PURPOSE

This revenue procedure provides revised procedures for individual payees who are required under Treas. Reg. § 31.3406(d)-5(g)(5) to obtain validation of social security numbers (SSNs) from the Social Security Administration (SSA) to prevent or stop backup withholding under section 3406 of the Internal Revenue Code following receipt of a second backup withholding notice from a payor within a three-year period.

SECTION 2. BACKGROUND

Section 3406(a) of the Internal Revenue Code prescribes circumstances in which a payor must backup withhold on reportable payments it makes to a payee, including when the IRS notifies a payor that the taxpayer identification number (TIN) furnished by the payee to the payor is incorrect. In the case of an individual, a TIN is generally an SSN. See section 6109(d). Pursuant to section 3406(a)(1)(B) and (h)(8) and section 31.3406(d)-5, a payor (such as a bank) must send a notice to a payee after being notified by the IRS or a broker that the payee provided an incorrect name and TIN combination with respect to an account (the B notice). The B notice informs the payee that the name/TIN combination furnished to the payor does not match IRS or SSA records and describes the steps the payee must take to stop or prevent backup withholding from payments made after receipt of the B notice.

Pursuant to section 31.3406(d)-5(d) and (f), a payor that receives a notification

from the IRS or a broker of a name/TIN mismatch for an account must send the payee a B notice. If this is the only notification of a name/TIN mismatch received by the payor with respect to the account during the past three years, the B notice, referred to as a “first B notice,” must instruct the payee to provide a signed Form W-9, “Request for Taxpayer Identification Number and Certification,” to the payor to stop or prevent backup withholding. If the payor receives a second notification from the IRS or a broker of a name/TIN mismatch with respect to an account, and this notification is received within three years from the date of a previous notification of a name/TIN mismatch with respect to that account, section 31.3406(d)-5(g) requires the payor to send the payee another B notice, referred to as a “second B notice.” Under section 31.3406(d)-5(g)(1)(i), a TIN certified on a Form W-9 is not sufficient to stop or prevent backup withholding after a second B notice is sent. Instead, after a second B notice, the payor must receive validation of the payee’s name and TIN combination from the SSA or the IRS to stop or prevent backup withholding.

Section 31.3406(d)-5(d)(2)(i) and (g)(2) provides that the procedural requirements for B notices, such as the form of the notice and the manner of delivery, will be set forth in the Internal Revenue Bulletin. These rules are described in Rev. Proc. 93-37, 1993-2 C.B. 477, and Publication 1281, “Backup Withholding for Missing and Incorrect Name/TIN(s).” That revenue procedure and publication provide specific instructions regarding TIN validation, which must be included in the second B notice sent to payees.

Under section 6 of Rev. Proc. 93-37, in the case of a second B notice, an individual payee obtains validation of the payee’s name and SSN by requesting and

authorizing SSA to send Form SSA-7028, "Notice to Third Party of Social Security Number Assignment," to the payor. Effective January 1, 2010, SSA discontinued Form SSA-7028 for verifying SSNs to prevent or stop backup withholding. Because payees could no longer comply with section 6 of Rev. Proc. 93-37 after SSA discontinued the Form SSA-7028, the IRS issued Announcement 2010-41, 2010-25 I.R.B. 767, to provide interim procedures for name and SSN validation by SSA. Under these interim procedures, an individual payee obtains validation of the payee's name and SSN from the SSA by contacting the local SSA office and requesting a social security number printout (SSN printout). Once the payor receives a copy of the SSN printout from the payee, backup withholding is prevented or terminated. Effective August 1, 2014, SSA will discontinue providing SSN printouts.

SECTION 3. CHANGES

This revenue procedure sets forth revised procedures for an individual payee to obtain validation of the payee's name and SSN from SSA on or after August 1, 2014. Under these revised procedures, following receipt of a second B notice, a copy of a social security card, as described in section 4, is validation from the SSA of a name and SSN combination. This revenue procedure instructs payors and individual payees regarding these revised procedures.

SECTION 4. REVISED PROCEDURES

In response to a second B notice, the requirements of section 31.3406(d)-5(g) will be satisfied if an individual payee provides the payor with a copy of a social security card with his or her correct name and SSN. Payors may rely upon a social security card as being correct only if the name and SSN combination appearing on the card differ

from the name and SSN combination appearing on the second B notice, or if there is a date appearing on the social security card that is no earlier than six months prior to the date of the second B notice. If a payee does not have a social security card, the payee must obtain a new or replacement social security card from the SSA. If the payee's name and SSN combination listed on the second B notice is not current or correct, the payee should update his or her records with the SSA and provide a copy of the updated social security card to the payor. A payee may obtain a social security card for free by filing Form SS-5, "Application for a Social Security Card," with the SSA. The application form and information regarding required supporting documentation are available at www.socialsecurity.gov. Under section 31.3406(d)-5(g)(3), a payor who receives a copy of a payee's social security card meeting the requirements specified in this revenue procedure will not be required to commence backup withholding and may stop backup withholding on reportable payments made to that payee. Pursuant to section 3406(h)(9) and section 31.3406(d)-5(h), the payor must use the name and SSN combination provided pursuant to this revenue procedure on future information returns and statements if the payor is subject to future information reporting with respect to the account.

Publication 1281 will be revised consistent with this revenue procedure and is available on irs.gov. Payors should use the language provided in Publication 1281 to instruct payees regarding the revised procedures described in this revenue procedure for validating a payee's name and SSN after a second B notice.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Announcement 2010-41 is obsoleted. Sections 5.02(1), (2), (3)(c)(i), and

(3)(e)(i)-(iii) of Rev. Proc. 93-37 are modified and superseded with respect to the form and content of the second B notice. Section 6.02(1) of Rev. Proc. 93-37 is modified and superseded with respect to the form and content of the validation in the case of a second B notice for a name/TIN mismatch.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for name and SSN validation under section 31.3406(d)-5(g) provided to payors on or after August 1, 2014. Before that date, payors may accept copies of social security cards that provide name and SSN validation under the revised procedures described in this revenue procedure, or an SSN printout.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Hollie M. Marx of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure contact Hollie M. Marx on (202) 317-6844 (not a toll-free call).