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Backup Withholding/Employment Tax
Implications



IRC §3406

Backup Withholding Objectives

At the end of this presentation, you will be able to

- Define backup withholding
- Explain the current processes
- Describe payer obligation under IRC §3406



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IRC §3406 Backup Withholding Purpose

Remind payers and payees about their obligations to comply with backup withholding under IRC §3406



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Backup Withholding Rate

- January 1, 2018 – 24 percent
- Prior year rate – 28 percent



Backup Withholding Rules

- Backup withholding is deducted on payments when
 - Payee fails to furnish taxpayer identification number (TIN)
 - Payee fails to certify they are not subject to backup withholding
 - IRS notifies the payer of incorrect TIN of payee(s)
 - IRS notifies the payer of certain types of underreported income of payee(s)



Payments Subject to Backup Withholding

- Payments subject to backup withholding are
 - Form 1099-B, Proceeds From Broker and Barter Exchange Transactions
 - Form 1099-DIV, Dividends and Distributions
 - Form 1099-G, Certain Government Payments
 - Form 1099-INT, Interest Income
 - Form 1099-K, Payment Card and Third Party Network Transactions



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Payments Subject to Backup Withholding (cont'd)

- Form 1099-MISC, Miscellaneous Income
- Form 1099-OID, Original Issue Discount
- Form 1099-PATR, Taxable Distributions Received From Cooperatives
- Form W-2G, Certain Gambling Winnings



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Information Returns Filing Thresholds

- General Instructions for Certain Information Returns (2019) contains thresholds
- When payer withholds on payments below filing thresholds, payee must receive an information return.



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Information Returns Due Dates

- Due dates for most information returns
 - February 28 (paper)
 - March 31 (electronic)
- Due date exception
 - 1099 Miscellaneous
 - January 31 (paper or electronic)



Verifying Taxpayer Identification Numbers (TINs)

- TIN Matching Program
 - Authorized payers can verify TINs before filing Form 1099
 - Publication 2108-A, On-Line Taxpayer Identification Number (TIN) Matching Program
 - IRS.gov search “TIN matching”



CP 2100/2100A Notices

- CP 2100 Notice
 - Missing TIN
 - Incorrect TIN/name combination
 - 50 or more information returns filed
- CP 2100-A Notice
 - Missing TIN
 - Incorrect TIN/name combination
 - Less than 50 filings

CP 2100/2100A Notices (cont'd)

- CP 2100/2100A Notice
 - Lists names with missing TIN or name/TIN discrepancy
- Two annual mail outs
 - September/October
 - April of following year



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CP 2100/2100A Notice: Payer Responsibilities

- Payer must verify payee records
 - Missing TIN
 - Start backup withholding
 - Continue backup withholding until TIN is received



Incorrect Name/TIN: Payer Responsibilities

- Compare identified records of incorrect names/TINs
- If payer records agree with IRS information, send a “B” notice within 15 business days
- “B” notice informs payee of backup withholding if information is not provided



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Two Types of “B” Notices

- First “B” Notice
 - Payee not on prior CP 2100/2100A Notice list for previous two years
 - Payer includes a Form W-9, Request for Taxpayer Identification Number and Certification



Two Types of “B” Notices (cont’d)

- If payee returns completed W-9
 - Payer keeps with records
 - Missing TIN: Stops backup withholding
 - Incorrect TIN/Name Combination: No backup withholding
- If payer does not return W-9
 - Begin backup withholding



Two Types of “B” Notices (cont’d)

- Second “B” Notice
 - Send the second B notice if this is a second notice to a payee within a three year period
 - Send the second B notice within 15 business days
 - Payee needs to provide copy of SSN card to validate TIN



Backup Withholding “C” Program

- BWH “C” Program
 - Focus is on the failure to report interest and dividend income
 - Failure to correct reporting requirement, payer will withhold 24 percent
- Additional information
 - Publication 1335, Underreporter Backup Withholding
 - IRS.gov search “Backup Withholding C Program”

Penalties: Information Returns

- Penalties for missing or name/incorrect TINs
 - Failure to file correct information returns – IRC §6721
 - Failure to furnish correct payee statements – IRC §6722
 - Late filing and electronic media penalties
- Notice 972CG, Notice of Proposed Civil Penalty



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Waiver of Penalties: Information Returns

- Penalties may be waived for
 - Failure to file correct information returns
 - Failure to furnish correct payee statements
- Reasonable cause defined
 - Publication 1586, Reasonable Cause Regulations & Requirements for Missing and Incorrect Name/TINS



Payer Liability for the Backup Withholding Amount

- Payer liable for backup withholding if
 - Failed to backup withhold
 - Failed to remit to the IRS
- Payer can avoid backup withholding liability if
 - Payee reported payments received
 - Payee paid taxes on payments received



Payer Penalties for Failure to Backup Withhold

- Payer penalties include
 - IRC §6651
 - Failure to file Form 945
 - Failure to pay backup withholding tax
 - IRC §6656
 - Failure to make deposit
 - IRC §6662
 - Failure to report proper amount of backup withholding tax



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Payer Penalties for Failure to Backup Withhold (cont'd)

- IRC §6663
 - Fraudulently failed to report proper amount of backup withholding tax
- IRC §6672
 - Failure to collect and pay over tax at the source (Trust Fund Recovery penalty)



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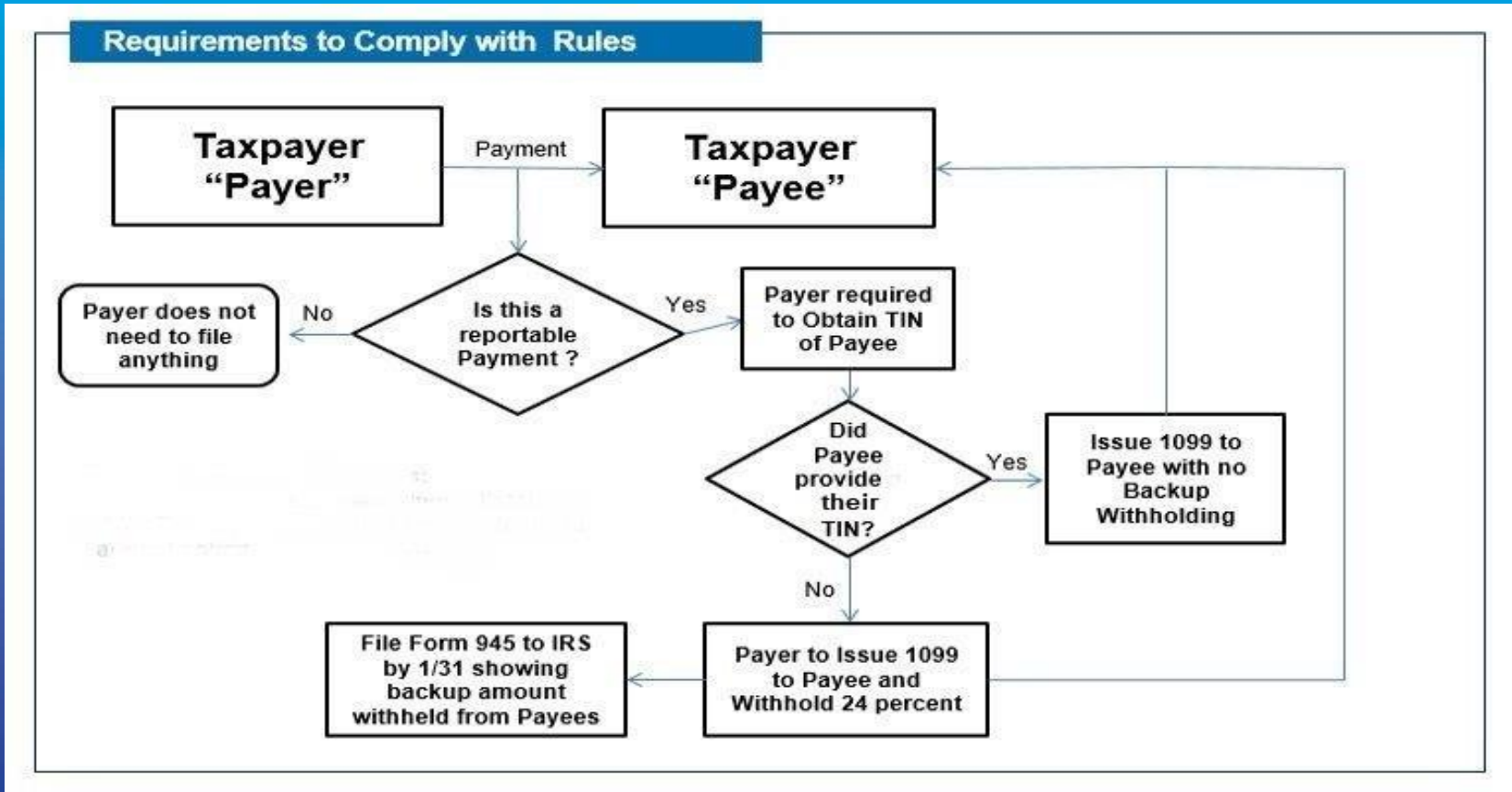
Reporting Backup Withholding

Form 945, Annual Return of Withheld Federal Income Tax

- Due by January 31 for the prior year



Taxpayer Compliance Chart





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Hot Topics on IRS.gov	Search Word(s)
Disaster Assistance	disaster
E-Services – Online Tax Tools	eservices
Estimated Taxes	estimated taxes
Identity Theft Info for Tax Pros	identity protection prevention
Installment Agreement User Fees	payment plan fees
Offer in Compromise	offers
Payment Options for Taxpayers	payment options
Tax Reform / Paycheck Checkup	tax reform
Tax Scams and How to Report Them	scams
Webinars for Tax Practitioners	webinars