



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CC:PA:APJP:BR 1:LCNash
COR-115719-00
UIL 3406.00-00

Number: **INFO 2000-0211**
Release Date: 9/30/2000



Dear [REDACTED],

This letter is in response to your request for information concerning backup withholding. We hope that this letter is helpful and addresses your concerns.

Generally speaking, the Internal Revenue Service has the authority under Internal Revenue Code section 3406 and the accompanying regulations to require payors to backup withhold in certain circumstances. In general, section 3406 provides that in case an any reportable payment, if (a) the payee fails to furnish his or her TIN (Taxpayer Identification Number) to the payor in the proper manner required (i.e., Form W-9), (b) the Secretary notifies the payor that the TIN furnished by the payee is incorrect, (c) there has been a notified payee underreporting, or (d) there has been a payee certification failure, then the payor shall deduct and withhold from such payment a tax equal to 31 percent of such payment. For example, a taxpayer's failure to provide a Form W-9, certifying a valid TIN to a payor, will result in backup withholding.

Payors are required to turn over backup withholding funds to an authorized financial institution or Federal Reserve Bank on either a monthly or semi-weekly basis.

With regard to your questions concerning the copy of your statement, because the Internal Revenue Service did not prepare the document in question, it is not possible for us to answer your questions concerning the document. You may wish to go back to your broker to get further information about your statement.

The backup withholding regulations and section 6413 provide a procedure for refunding erroneously withheld amounts to taxpayers. Treasury Regulation section 35a.9999-3, Question & Answer 38 specifically identifies what the Internal Revenue Service considers to be an erroneously withheld amount. It should be noted that refunding of erroneously withheld amounts is completely within the discretion of the payor if it is

COR-115719-00

within the same calendar year. As stated in the backup withholding regulations, if a payor withheld from a payee in error or withheld more than the correct amount, the payor may refund the amount improperly withheld if certain conditions are met. The refund must have been made: (1) before the end of the calendar year and (2) before the time the payor furnishes a Form 1099 to the payee with respect to the improperly withheld payment. See Treasury Regulation section 35a.9999-3, Questions & Answers 38-39. If these requirements are not met, or the payor refuses to refund the money, the payee must wait until he/she files a tax return to get the refund.

Finally, you have asked us about possible abuses of the backup withholding system. We are not in a position to comment on the possibility of abuse of the backup withholding regulations relating to a specific case. Such comments would require a specific factual determination that exceeds the scope of a general information letter.

For your convenience, we have attached photocopies of the relevant Treasury Regulations and Internal Revenue Code sections referenced in this letter.

If you have any other questions, please contact either Laura C. Nash or myself at 202/622-4910.

Sincerely,

Pamela Wilson Fuller
Assistant to the Branch Chief, Branch 1
Administrative Provisions & Judicial
Practice

Attachments: As stated