

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Valerie B. Hardeman
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(Headquarters, Compliance Planning & Classification)

from: Nancy Rose, Senior Counsel
(Procedure & Administration)

subject:

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Is the _____ required to report interest payments to the
beneficiaries of the _____ program and backup withhold
on payments to payees with missing or incorrect Taxpayer Identification Numbers
(TINs)?

CONCLUSION

Yes. _____ are required to report interest payments under section 6041 and
to backup withhold under section 3406 when payees have missing or incorrect TINs.
The fact that the interest payments are based on amounts held in a _____ trust
does not change this obligation because that type of trust is not exempt from backup
withholding.

FACTS

As a result of the

The , which are managed by the . The payments are made directly to the recipients from and do not pass through a financial institution prior to being paid over. Pursuant to . The interest payments, however, are taxable income reportable under section 6041.

We have been advised that does file and furnish Forms 1099-INT to report interest payments made to the recipients. Unfortunately, a large number of these recipients have missing, unassigned, and incorrect TINs and does not know the whereabouts of many recipients.

Payors must deduct and withhold tax where a payee fails to furnish a TIN to the payor in the manner required or if the Secretary notifies the payor that the TIN furnished by the payor is incorrect. 26 U.S.C. § 3406(a)(1)(A)-(B); Treas. Reg. § 31.3406(a)-4(a)(1).

did not backup withhold on interest payments to recipients with missing TINs. The IRS has issued backup withholding notices (CP 2100) to with respect to the Forms 1099 with missing or incorrect TINs, advising of its backup withholding obligations .

has not taken action in response to these notices and argues that it is unable to backup withhold on the accounts because they are held in trust for the beneficiaries.

also notes that many of the “whereabouts unknown” payees have not actually received the funds.

This failure to backup withhold has been an issue for many years.

LAW AND ANALYSIS

are subject to information reporting and backup withholding obligations. See Treas. Reg. §31.3406(a)-2 (payors required to make an information

return under section 6041 are obligated to backup withhold). Thus, [redacted] is required to report these interest payments and backup withhold on payments to payees with missing or incorrect TINs, pursuant to section 3406.

Further, the fact that the accounts are held in a [redacted] trust does not exempt [redacted] trust fund that administers the [redacted], which would typically be exempt from backup withholding requirements under Treas. Reg. 31.3406(a)-2(c)(1). Therefore, as a [redacted] trust fund, [redacted] should be treated as a payor subject to backup withholding under section 3406. As a payor, the [redacted] is also liable for amounts that were required to be withheld. See 26 U.S.C. § 3403; Treas. Reg. 31.3406(h)-2(h).

Finally,

[redacted]. The amounts are reportable when paid, even if not actually received. Under Treas. Reg. § 1.6041-1(h), “an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made and is made available to him so that it may be drawn at any time and its receipt brought within his own control and disposition.” Backup withholding, if applicable, applies at the time of payment. See Treas. Reg. § 31.3406(a)-4(a). The payor must withhold at the time it makes the payment to the payee or the payee’s account; i.e., the amount is credited to the account of, or made available to, the payee.

Therefore, if the amounts payable to those payees do not meet this test, they would not have to be reported and would not be subject to backup withholding. Whether the test is met likely turns on whether [redacted] funds that have not been received by “whereabouts unknown” payees have been set aside and are otherwise payable on demand by the recipients. See, e.g., *Manchester Music Co., Inc. v. United States*, 733 F. Supp 473, 482 (D.N.H. 1990) (payment not deemed made under section 6041 because one party could not access funds without consent of the other). It is our understanding that [redacted] owners whose whereabouts are unknown may have access to their accounts and may receive those funds upon request.

CONCLUSION

Under section 3406, [redacted] is required to backup withhold on [redacted] interest payments to payees with missing or incorrect TINs. The administration of these payments through a [redacted] trust fund has no bearing on [redacted] responsibility to backup withhold. Finally, funds that have been set aside, but not yet received, by payees whose whereabouts are unknown are also subject to backup withholding if those payees may receive the funds from [redacted] on demand.

Please call (202) 317-4210 if you have any further questions.