

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

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to: Joseph J. Tiberio  
Supervisory Internal Revenue Agent  
(Employment Tax Policy)

from: Pamela Wilson Fuller *PWF*  
Senior Technician Reviewer  
(Procedure & Administration, Branch 2)

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subject: Compliance with CP2100 or CP2100A Notice and Backup Withholding under Section 3406(a)(1)(A)

Facts

Scenario 1

The payor made a reportable payment to the payee, but the payee did not furnish its Taxpayer Identification Number (TIN) to the payor. The payor did not backup withhold. The IRS sent the payor a CP2100/2100A notice stating that the payor needs to secure the payee's TIN by having the payee send a Form W-9 to the payor. The payor followed the compliance instructions in the CP2100/2100A notice.

Scenario 2

The payor made a reportable payment to the payee, and the payee furnished a Form W-9 containing a TIN to the payor. The IRS sent payor a CP2100/2100A notice stating that the payee's TIN is incorrect. Payor followed the compliance instructions in the CP2100/2100A notice by timely sending a blank Form W-9 to the payee and informing the payee that backup withholding will begin if the payee does not send back an executed Form W-9.

Issue

In the case of a payor who made a reportable payment and received a CP2100/2100A notice, does the payor's compliance with the instructions stated in the notice imply that the payor does not have backup withholding liability under section 3406(a)(1)(A) with respect to a reportable payment made before compliance?

### Conclusion

No. Under section 3406(a)(1)(A), the payor must backup withhold during the period during which the TIN has not been furnished in the manner required, regardless of whether the payor receives and complies with a CP2100 or CP2100A notice.

### Analysis

Under section 3406(a)(1), a payor of any reportable payment within the meaning of section 3406(b) is required to backup withhold from the reportable payment if either: (A) the payee fails to furnish his TIN to the payor in the manner required, or (B) the IRS notifies the payor that the TIN furnished by the payee is incorrect. IRC § 3406(a)(1)(A) & (B); see also Reg. § 31.3406(a)-1(b)(1). The disjunctive “or” in the rule indicates that the condition under section 3406(a)(1)(A) for imposing backup withholding is independent of the condition under section 3406(a)(1)(B) for imposing backup withholding. Backup withholding may also be required in other situations. See IRC § 3406(a)(1)(C) & (D); Reg. § 31.3406(a)-1(b)(2).

In the case of backup withholding liability under section 3406(a)(1)(A), backup withholding is required during the period during which the TIN has not been furnished in the manner required. See IRC § 3406(e)(1); Reg. § 31.3406(e)-1(b).

In the case of backup withholding liability under section 3406(a)(1)(B), backup withholding is required during the period: (1) beginning after the close of the 30th day after the day on which the payor received the notification described in section 3406(a)(1)(B); and (2) ending before the payee furnishes another TIN in the manner required. See IRC § 3406(e)(2); Reg. § 31.3406(e)-1(c) (referring to Reg. § 31.3406(d)-5(e) and (g)(3)).

A CP2100 or CP2100A notice notifies a payor that the TIN furnished by the payee is incorrect. See, e.g., *Understanding your CP2100 or CP2100A Notice, available at* <https://www.irs.gov/individuals/understanding-your-cp2100-or-cp2100a-notice>; IRM 3.42.9.14(1) (12-10-2019). Thus, the CP2100 or CP2100A notice provides the notice described in section 3406(a)(1)(B) that may result in backup withholding liability under section 3406(a)(1)(B).

The CP2100 or CP2100A notice instructs the payor to obtain from the payee a new Form W-9, *Request for Taxpayer Identification Number and Certification*, or equivalent form, to obtain the payee’s TIN. Thus, the payor’s compliance with all the instructions in a CP2100 or CP2100A notice may lead to the condition stated in section 3406(e)(2)(B) (the payee furnishing another TIN in the manner required) being met. Such condition is met if the payor obtains a properly executed new Form W-9 or equivalent from the payee, in which case backup withholding under section 3406(a)(1)(B) can cease. But compliance with the CP2100 or CP2100A has no bearing on the backup withholding liability under section 3406(a)(1)(B) that existed for the period before compliance.

While the CP2100 or CP2100A notice is relevant to the imposition of backup withholding obligations under section 3406(a)(1)(B), the CP2100 or CP2100A notice is not relevant to the imposition backup withholding obligations under section 3406(a)(1)(A). Moreover, complying with all the instructions stated in a CP2100 or CP2100A notice does not affect backup withholding liability that was preexisting under section 3406(a)(1)(A) before the notice was sent. If the conditions for backup withholding under section 3406(a)(1)(A) are met, then backup withholding obligations apply irrespective of whether backup withholding obligations under another provision also apply. "A payor must continue to withhold under section 3406 until no condition for imposing backup withholding exists with respect to the payee." Reg. § 31.3406(e)-1(a).

In Scenario 1, the payor paid a reportable payment within the meaning of section 3406(b) to a payee and at the time of the reportable payment, the payee had not furnished any TIN to the payor. The condition for imposing backup withholding with respect to that payee under section 3406(a)(1)(A) is met. Thus, the payor was obligated to backup withhold. If the payee thereafter furnishes a Form W-9 to the payor, then within 30 days of receipt of the Form W-9, the payor should stop backup withholding under section 3406(a)(1)(A) with respect to that payee. See Reg. § 31.3406(e)-1(b)(2)(i).

In Scenario 2, if the IRS sends payor a CP2100 or CP2100A notice notifying the payor that the TIN furnished by the payee is incorrect, the condition in section 3406(a)(1)(B) requiring the payor to backup withhold applies. This is separate from the backup withholding obligation under section 3406(a)(1)(A). The CP2100 or CP2100A notice does not affect the preexisting backup withholding liability under section 3406(a)(1)(A).

Please call (202) 317-6845 if you have any further questions.