

of (1) the date that the payor pays the last reportable payment to that account, or (2) the date that the payor received a notice from the IRS to impose the C trigger on that account. See § 31.3406(c)-1(e)(3).

IV. Special Rules for Acquiring Accounts (Including a Readily Tradable Instrument) or Selling a Readily Tradable Instrument

A. By electronic transmission—proposed § 31.3406(d)-3. A payee can acquire by electronic transmission an account or an instrument that earns reportable interest or dividends. Under the proposed regulations the payor, at its option, may permit a payee to furnish the certifications relating to the A and D triggers within 30 days after the establishment or acquisition of the account or the instrument (30-day period) by electronic transmission, provided that the payee furnishes the payee's TIN at the time of the establishment or the acquisition. However, if the payee makes any withdrawal within the 30-day period and before the payor receives the payee's certifications, the payor must withhold to the extent of any reportable interest or dividends paid to the payee during the 30-day period and at the time of withdrawal.

The proposed regulations provide comparable rules for the sale of a readily tradable instrument by electronic transmission. In this context, the payee is permitted to withdraw (or reinvest) up to 69 percent of the gross proceeds from the sale during the relevant 30-day period.

Commentators requested that backup withholding be applied in the same manner whether the electronic transmission involves the establishment or acquisition of an account or a readily tradable instrument or the sale of a readily tradable instrument. In response to this comment, the final regulations provide that backup withholding applies if the payee withdraws more than 69 percent of the reportable interest or dividends paid to the payee during the relevant 30-day period and at the time of withdrawal, but only if the payor has not received the payee's certifications relating to the A and D triggers at the time of the withdrawal. See § 31.3406(d)-3(a).

B. By mail—proposed § 31.3406(d)-3(a)(1). The proposed regulations provide that a payee may provide the certifications relating to the A and D triggers within 30 days after a payee establishes or acquires a readily tradable instrument by mail before January 1, 1985, provided the payee furnishes the payee's TIN upon the establishment or

acquisition. The proposed regulations do not provide a similar rule for the sale of a readily tradable instrument by mail.

To simplify the procedures for entering into investments which do not occur in person, the final regulations provide a 30-day rule for the establishment or acquisition of an account or readily tradable instrument by mail and extend the 30-day rule to the sale of a readily tradable instrument by mail. Under the final regulations, if the payee furnishes the payee's TIN before the transaction, backup withholding applies during the 30-day period only if the payee withdraws more than 69 percent of the reportable payment and if the payor has not received the payee's certifications relating to the A or D triggers, whichever applies, at the time of the withdrawal. See § 31.3406(d)-3(a).

V. Section 3406 Confidentiality Issues—Proposed § 31.3406(f)-1(a)

Section 3406(f) provides that a payor may not use information obtained under section 3406 except for meeting a requirement of that section. Commentators requested clarification on what actions a payor or broker may take, consistent with section 3406(f), in response to a payee's failure to provide the payee's TIN under section 3406(a)(1)(A). The final regulations provide that a payor who closes an account at or before the end of a calendar year in which the payee opens the account without providing the payee's TIN or documentation of foreign status, as required, during that year will not, in the absence of evidence to the contrary, be deemed in violation of section 3406(f).

Another commentator inquired whether prohibiting a payee from withdrawing funds from the payee's account is a violation of section 3406(f). The final regulations clarify that refusing to allow a payee to withdraw funds from the payee's account solely because the payee has not furnished a TIN violates section 3406(f). See § 31.3406(f)-1(b)(1).

VI. Exemptions From Backup Withholding.

A. Interaction of information reporting and backup withholding exemptions—proposed § 31.3406(g)-1(a). Several commentators questioned the interaction between the rules exempting payees from information reporting and those exempting payees from backup withholding. The class of recipients exempt from information reporting is larger than the class exempt from backup withholding. The final regulations clarify that the list of the

payees that are specifically exempt from backup withholding is not exclusive and that other payees that are exempt from information reporting also are exempt from backup withholding. See § 31.3406(g)-1(a)(2).

B. Interest on certain life-insurance contracts—proposed § 31.3406(g)-1(a)(4). Commentators requested that the temporary exemption from backup withholding for interest payments made before January 1, 1992, on "advance premiums", "prepaid premiums", or "premium deposit funds", on certain insurance policies be made permanent. The final regulations provide an extension through December 31, 1996.

C. Payments reportable under section 6047—proposed § 31.3406(g)-2(c)(1) and (2). Commentators noted that, contrary to the position set forth in the proposed regulations, backup withholding does not apply to designated distributions paid after December 31, 1984. The final regulations clarify that backup withholding does not apply to those payments. See § 31.3406(g)-2(d).

D. Awaiting-TIN certificate—proposed § 31.3406(g)-3. Commentators requested simplification of the backup withholding rules applicable to accounts for which a payor has received an awaiting-TIN certification. One suggestion was that backup withholding should not apply during the period (up to 60 days) that the payee is waiting for the payee's TIN if no more than 69 percent of the reportable payment is withdrawn during the 60-day period. The final regulations adopt this suggestion. Therefore, backup withholding is deferred during the 60-day period unless the payee makes a withdrawal (of more than \$500 in one transaction) during that time or has failed to provide the certification relating to the D trigger. If the payee makes a withdrawal of more than \$500 in one transaction during the 60-day period, backup withholding applies to the extent of any reportable interest or dividends made to the account during the 60-day period and at the time of withdrawal unless the payee reserves 31 percent of all reportable payments made to the account during that period. Payors may elect, however, to impose withholding during the 60-day period. See § 31.3406(g)-3(a)(2) and (3).

Commentators requested clarification of the interaction of the awaiting-TIN rules for post-1983 accounts or instruments and the obligation of the payee to provide the certification relating to the D trigger that the payee is not subject to backup withholding due to the C trigger. The final regulations clarify that in spite of the