

(ii) *Factors.* Factors that will be considered in determining whether withholding causes undue hardship include, but are not limited to, the following—

(A) Whether estimated tax payments, and other credits for current tax liabilities, or amounts withheld on employee wages or pensions, in addition to withholding under section 3406, would cause significant overwithholding;

(B) The payee's health, including the payee's ability to pay foreseeable medical expenses;

(C) The extent of the payee's reliance on interest and dividend payments to meet necessary living expenses and the existence, if any, of other sources of income;

(D) Whether other income of the payee is limited or fixed

(e.g., social security, pension, and unearned income);

(E) The payee's ability to sell or liquidate stocks, bonds, bank accounts, trust accounts, or other assets, and the consequences of doing so;

(F) Whether the payee reported and timely paid the most recent year's tax liability, including interest and dividend income; and

(G) Whether the payee has filed a bankruptcy petition with the United States Bankruptcy Court.

(7) *Bona fide dispute.* The Internal Revenue Service may make a determination under this paragraph (g)(7) if there is a dispute between the payee and the Internal Revenue Service on a question of fact or law that is material to a determination under paragraph (g)(3)(i) of this section and, based upon all the facts and circumstances, the Internal Revenue Service finds that the dispute is asserted in good faith by the payee and there is a reasonable basis for the payee's position.

(h) *Payees filing a joint return—(1) In general.* For purposes of this section, if payee underreporting is found to exist with respect to a joint return, then the provisions of this section apply to both payees (i.e., the husband and wife). As a result, both payees are subject to withholding on accounts in their individual names as well as accounts in their joint names. Either or both payees may satisfy the criteria for a determination that no payee underreporting exists, that the underreporting has been corrected, or that a bona fide dispute exists (as provided in paragraph (g)(3) (i), (ii), or (iv) of this section). Both payees, however, must satisfy the criteria for a determination that withholding will cause or is causing undue hardship (as

provided in paragraph (g)(3)(iii) of this section).

(2) *Exceptions—(i) Innocent spouse.* A spouse who files a joint return may obtain a determination that withholding should stop or not start with respect to payments made to his or her individual accounts, if the spouse shows that—

(A) He or she did not underreport income because he or she is a spouse described in section 6013(e), i.e., innocent spouse; or

(B) There is a bona fide dispute regarding whether he or she is an innocent spouse and hence did not underreport income.

(ii) *Divorced or legally separated payee.* A payee who, at the time of the request for a determination under paragraph (g) of this section, is divorced or separated under State law may obtain a determination that undue hardship exists (or would exist) under paragraph (g)(3)(iii) of this section with respect to reportable interest or dividend payments made to his or her individual accounts if the divorced or legally separated payee satisfies the criteria for a determination under paragraph (g)(6) of this section.

(i) *Reserved.*

(j) *Penalties.* For the application of penalties related to this section, see sections 6682 and 7205(b).

**§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.**

(a) *Requirement to backup withhold.* Withholding under section 3406(a)(1)(A) applies to a reportable payment (as defined in section 3406(b)) if the payee does not furnish the payee's taxpayer identification number to the payor in the manner required by this section. The period for which withholding is required is described in § 31.3406(e)–1(b). See § 31.3406(d)–3(a) and (b) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by electronic transmission or by mail, or an instrument is sold through a broker by electronic transmission or by mail. See § 31.3406(d)–4 for special rules applicable to readily tradable instruments acquired through a broker. See § 31.3406(h)–3(e) for the rules on when a payor may rely on a Form W–9. See also § 31.3406(g)–3 for rules regarding a payee awaiting receipt of a taxpayer identification number. See the applicable information reporting sections and section 6109 and the regulations thereunder to determine whose taxpayer identification number should be provided.

(b) *Reportable interest or dividend account—(1) Manner required for*

*furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.* A payee must furnish the payee's taxpayer identification number to the payor with respect to any obligation, deposit, certificate, share, membership, contract, investment, account, or other relationship or instrument established or acquired on or before December 31, 1983 (a pre-1984 account) and with respect to which the payor makes a reportable interest or dividend payment (as defined in section 3406(b)(2)). The manner of determining whether an account or an instrument is a pre-1984 account is described in paragraph (b)(2) of this section. The payee of a pre-1984 account may furnish the payee's taxpayer identification number to the payor orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct.

(2) *Determination of pre-1984 account or instrument—(i) In general.* An account that is in existence before January 1, 1984, will be considered a pre-1984 account, regardless of whether additional deposits are made to the account on or after January 1, 1984. An account established as an expansion of a credit union prime account in existence prior to January 1, 1984, constitutes a pre-1984 account. If funds taken from one account in existence prior to January 1, 1984, are used to create a new account on or after that date, however, the new account does not constitute a pre-1984 account except as provided in the preceding sentence. An instrument acquired prior to January 1, 1984, is a pre-1984 account. Regardless of when an instrument was acquired, if it is negotiated in a window transaction as defined in § 31.3406(b)(2)–3(b), it is treated as an instrument acquired after December 31, 1983. An obligation in bearer form and subject to reporting under section 6045, whenever acquired, is not a pre-1984 account. Any instrument, whenever acquired, that is held in a brokerage account is considered a pre-1984 account if the brokerage account is not a post-1983 brokerage account (as described in paragraph (c)(1)(ii) of this section). If shares of a corporation are held before January 1, 1984 (or considered held before that date by operation of this paragraph (b)(2)), and additional shares are acquired by the holder, irrespective of whether the shares are received by reason of a stock dividend, investing new cash, or otherwise, the new shares, in the discretion of the payor, may be considered a pre-1984 account. In the