

the payor or broker must retain the form unless the payor or broker can establish the existence of procedures that are reasonably calculated to ensure that a payee who has so certified is accurately identified in the payor's or broker's records.

(h) *Cross references.* For the requirement to file an information return (and furnish the related statement) with respect to a reportable payment, particularly if that payment has been subject to withholding under section 3406, see subtitle F, chapter 61, subparts B and C of the Internal Revenue Code. See § 31.6302-4 for the requirement to deposit amounts withheld under section 3406 on either a monthly or semi-weekly basis. See § 31.6011(a)-4(b) for the requirement to file Form 945, Annual Return of Withheld Federal Income Tax, to reflect amounts withheld under section 3406. See § 31.6071(a)-1 for the time for filing the Form 945.

§ 31.3406(i)-1 Effective date.

Sections 31.3406-0 through 31.3406(i)-1 (except §§ 31.3406(d)-5 and 31.3406(g)-1(c) and except for international transactions) are effective after December 31, 1996, and, optionally, for reportable payments made and transactions occurring on or after December 21, 1995. For the effective date of § 31.3406(d)-5, see § 31.3406(d)-5(i). Section 31.3406(g)-1(c) is effective before January 1, 1997. See §§ 35a.9999-0T through 35a.9999-5 of this chapter for rules that apply to international transactions after December 31, 1996.

Par. 9. Section 31.6011(a)-5(a) is amended by:

1. Removing the word "or" immediately after the language "941PR," in the first and third sentences of paragraph (a)(1).

2. Adding the language "or Form 945" immediately after the language "Form 941VI" in the first and third sentences of paragraph (a)(1).

3. Adding the language "(or other person)" immediately after the word "employer" in the second, third, fourth, and sixth sentences of paragraph (a)(1).

4. Removing the authority citation at the end of the section.

Par. 10. Section 31.6011(a)-6 is amended by revising the heading and the first and third sentences of paragraph (a)(1) to read as follows:

§ 31.6011(a)-6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages and nonpayroll payments.* An employer (or other person) who is required to make a return on a particular

form pursuant to § 31.6011(a)-1, § 31.6011(a)-4, or § 31.6011(a)-5, and who in any return period ceases to pay wages or nonpayroll payments in respect of which he is required to make a return on that form, must make the return for the period as a final return.

* * * Every such person filing a final return (other than a final return on Form 942 or Form 943) must furnish information showing the date of the last payment of wages (as defined in section 3121(a) or section 3401(a)), and, if appropriate, the date of the last payment of nonpayroll payments defined in § 31.6011(a)-4(b). * * *

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Par. 11. Sections 31.6051-4 and 31.6413(a)-3 are added to read as follows:

§ 31.6051-4 Statement required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b)(1)) who is required to deduct and withhold tax under section 3406 must furnish to the payee a written statement containing the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section is Form 1099. In the case of any reportable interest or dividend payment as defined in section 3406(b)(2), the prescribed form is the Form 1099 required in § 1.6042-4 of this chapter (relating to payments of dividends), § 1.6044-5 of this chapter (relating to payments of patronage dividends), or § 1.6049-6(e) of this chapter (relating to payments of interest or original issue discount). Statements required to be furnished by this section will be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section must include the amount of tax withheld under section 3406. In no event will a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section.

(c) *Information required.* Each statement on Form 1099 must show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) The amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N whether or not the amount of the reportable payment is less than the amount for which an information return is required. If tax is withheld under section 3406, the statement must show

the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement must be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

§ 31.6413(a)-3 Repayment by payor of tax erroneously collected from payee.

(a) *In general*—(1) *Erroneous withholding under section 3406 of the Internal Revenue Code.* If a payor or broker withholds under section 3406 from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker will be considered to have withheld erroneously under section 3406 only if the amount is withheld because of an error by the payor or broker (e.g., an error in flagging or identifying an account that is subject to withholding under section 3406). The payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee if—

(i) The payor or broker requires a payee described in § 31.3406(g)-1(a) or described in a provision of the Internal Revenue Code requiring the reporting of a payment subject to withholding under section 3406 to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds under section 3406 from a payment to the payee;

(ii) The payor or broker does not require the payee to certify concerning its exempt status and the payor or broker withholds under section 3406; or

(iii) The payor or broker withholds under section 3406 from a payee after the payee provides a taxpayer identification number or required certification (including the certification relating to foreign status described in § 1.6049-5(b)(2)(iv) of this chapter or