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*26 CFR 31.3406(g)-1: Exceptions for payments to certain payees and certain other payments.*

## **T.D. 9136**

### **DEPARTMENT OF THE TREASURY**

#### **Internal Revenue Service 26 CFR Parts 31, 301, and 602**

#### **Information Reporting and Backup Withholding for Payment Card Transactions**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. This document also contains final regulations relating to the IRS TIN Matching Program. The regulations in this document affect payors (and their authorized agents) and payees of certain reportable payments and provide guidance necessary to comply with the law.

**DATES:**

*Effective Date:* These regulations are effective July 13, 2004.

*Applicability Dates:* The amendments to §31.3406(g)–1 are applicable for payments made on or after January 1, 2005. The amendments to §301.6724–1 are applicable for information returns required to be filed, and information statements required to be furnished, after December 31, 2005. Section 31.3406(j)–1(a) and (f) are applicable January 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Donna Welch, (202) 622–4910 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### **Paperwork Reduction Act**

The collection of information contained in these final regulations has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1819.

The collection of information is in §31.3406(g)–1(f)(3). This information is necessary to notify a cardholder/payor that a merchant/payee is not a qualified payee for purposes of the regulations. This information will alert a cardholder/payor that backup withholding under section 3406 may apply for future reportable payments. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 11,750,000 hours.

Estimated average annual burden per respondent: 5,875 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: monthly.

Comments concerning the accuracy of this burden and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays

a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

This document contains amendments to 26 CFR part 31 relating to backup withholding and the IRS TIN Matching Program under section 3406 of the Internal Revenue Code (Code). It also contains amendments to 26 Part 301 relating to waivers under section 6724 of information reporting penalties under sections 6721 and 6722.

Section 6041(a) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any one taxable year to file information returns with the IRS and to furnish information statements to payees. Among other items, the payor must include the payee's name and taxpayer identification number (TIN) on the information return and the information statement.

In general, section 6721(a)(1) imposes a \$50 penalty for each failure to file an information return on or before the required filing date, for any failure to include all of the information required to be shown on the return, or for the inclusion of incorrect information. Section 6724(a) provides that no penalty will be imposed under section 6721 if it is shown that the failure is due to reasonable cause and not to willful neglect.

Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) if (1) the payee fails to furnish the payee's TIN to the payor as required or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect. Section 3406(a)(1) also requires withholding in certain other situations that are not addressed in these regulations. Section 3406(i) provides that the Secretary shall prescribe the regula-

tions necessary or appropriate to carry out the purposes of section 3406.

A payment card transaction is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. A payment card is a card (or an account) that (1) is issued by a payment card organization or one of its members, affiliates, or licensees to a cardholder/payor and (2) represents, upon presentation to a merchant/payee, an agreement of the cardholder to pay the merchant through the payment card organization. A payment card organization is an entity that sets the standards and provides the mechanism, acting directly or indirectly through its members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction.

Information reporting compliance is difficult in payment card transactions because an invoice may not be issued, and the employee representing the cardholder/payor in the transaction may not request and obtain the name/TIN combination of the merchant/payee at the time of the transaction. In addition, backup withholding may be difficult because a merchant receives payment from the payment card organization within a few days after the transaction, but the cardholder does not pay the payment card organization until after it receives a payment card monthly billing statement.

### **The Temporary and Proposed Regulations**

On January 31, 2003, temporary regulations relating to the IRS TIN Matching Program were published in the **Federal Register** (T.D. 9041, 2003–1 C.B. 510 [68 FR 4922]). The temporary regulations permit a payor's authorized agent to participate in the IRS TIN Matching Program on behalf of the payor. Under the authority of these temporary regulations, the IRS issued Rev. Proc. 2003–9, 2003–1 C.B. 516, that allows payors' authorized agents, as well as all payors, to participate in the IRS TIN Matching Program.

A notice of proposed rulemaking (REG–116641–01, 2003–1 C.B. 518) cross-referencing the temporary regulations was also published in the **Federal**

**Register** (68 FR 4970) for January 31, 2003. The notice of proposed rulemaking contained additional proposed rules relating to the information reporting and backup withholding requirements for payment card transactions effectuated through a Qualified Payment Card Agent (QPCA).

The proposed regulations provide limited exceptions to the backup withholding requirements for payment card transactions. The principal exception applies if the payment is made through a QPCA and the payee is a qualified payee.

A payee is qualified for this purpose if, at the time of the payment, the QPCA has validated the payee's TIN through the IRS TIN Matching Program or if the payment is made during the six-month period following the date on which the QPCA first obtained the payee's TIN (six-month grace period). Under the proposed regulations, a QPCA must notify a cardholder/payor of any merchant/payees that are not qualified payees. The notice must appear on the billing information for the payment.

The proposed regulations provide a second exception for payments to persons other than qualified payees. Under this exception, reportable payments made through a QPCA are exempt from backup withholding if the payment is made within 60 days after the date of the first payment with respect to which the QPCA is required to provide notification to the payor that the payee is not a qualified payee.

In addition, the proposed regulations provide that cardholder/payors may establish reasonable cause for a failure to include all of the information required to be shown on their information returns, or for the inclusion of incorrect information, based on reliance on merchant/payee TINs supplied through a QPCA.

The proposed regulations provide that the rules relating to backup withholding and information reporting for payment card transactions apply during 2004. The temporary rule permitting agents to participate in the TIN matching program was effective January 31, 2003.

A public hearing was held on the proposed regulations on May 2, 2003. The IRS also received written and electronic comments responding to the notice of proposed rulemaking.

## **Explanation of Provisions and Summary of Comments**

After consideration of all the comments, the proposed regulations relating to the backup withholding requirements for payment card transactions effectuated through a QPCA and the reasonable cause exception to information reporting penalties are adopted as revised by this Treasury decision. The revisions are discussed below. The temporary amendments to the regulations relating to the IRS TIN Matching Program are also adopted as final regulations and the corresponding temporary regulations are removed.

### *1. Backup Withholding*

Several commentators recommended that the final regulations eliminate the qualified payee requirement and provide a complete exemption from backup withholding for payment card transactions made through a QPCA. One commentator noted that §31.3406(g)-2(e) of the regulations provides that a real estate reporting person is not required to backup withhold on a real estate transaction subject to reporting under section 6045. As an alternative to backup withholding, this commentator suggested that the QPCA should provide a list to the IRS of the merchant/payees for whom the QPCA cannot obtain valid TINs. The commentator further suggested that the IRS should impose penalties on the merchant/payees who fail to furnish valid TINs, rather than require backup withholding.

The regulatory exception for real estate transactions is based on section 3406(h)(5)(D), which provides that, except as otherwise provided in regulations, a real estate broker (as defined in section 6045(e)(2)) is not a broker for purposes of section 3406. The Code also includes limited grants of regulatory authority to exempt otherwise reportable payments from backup withholding in section 3406(b)(5) (relating to payments that do not exceed \$10) and in section 3406(g) (relating to payments to specified payees). The IRS and the Treasury Department do not view these limited grants of regulatory authority as authorizing a regulatory exemption for a broad class of transactions, which according to the comments involve payments of over \$100 billion per year, regardless of

the payee's identity or compliance with its tax obligations. Therefore, the final regulations do not adopt the recommendation for a complete exemption from backup withholding for payment card transactions made through a QPCA.

Several comments criticized the specific rules for determining whether a payee is a qualified payee and when backup withholding is required with respect to a payee who is not qualified. In general, the commentators viewed these rules as incompatible with current business practice because they require QPCAs to evaluate the status of payees at the time of each transaction and to communicate to cardholders through the billing process. The commentators suggested various changes to conform the rules to current business practices.

The IRS and the Treasury Department agree that the rules should accommodate current business practices to the extent practicable but believe some of the suggestions in the comments go beyond what is necessary and provide excessive periods of exemption from backup withholding for noncompliant payees. Accordingly, the final regulations include a number of new rules to address the commentators' concerns but do not adopt all of the specific changes suggested in the comments.

As suggested in the comments, the final regulations eliminate the requirement that QPCAs include information regarding payee status with the billing statement furnished to the payor. Instead, the final regulations require that the information be furnished within four months of the date of the payment and permit the information to be furnished as part of a quarterly or other regular report of payee data to the cardholder. To eliminate the need to evaluate the status of payees at the time of each payment, the final regulations permit QPCAs to treat all payments made during a calendar quarter or any shorter reporting period as being made on the last day of the period. Thus, for a QPCA choosing this treatment, a payee will be treated as a qualified payee with respect to all payments during the period if the QPCA obtains and verifies the payee's TIN at any time before the end of the period. Similarly, payments will be treated as being made on the last day of the reporting period for purposes of determining whether they are made within the six-month grace period. In this case, how-

ever, the regulations also provide that the grace period with respect to a payee will be treated as beginning not on the date of the first payment to the payee but on the first day of the reporting period in which the QPCA makes the payment.

The 60-day exception from backup withholding for payments made to persons that are not qualified payees is also modified to reflect the new rules for determining payee status and notifying cardholders. The exception in the final regulations applies to purchases made no later than two months after the last date for providing the first notice informing the cardholder that the payee is not a qualified payee.

One commentator suggested that a QPCA should be allowed to furnish information regarding payee status electronically on a secure website. The IRS and the Treasury Department are continuing to consider this comment and may issue further guidance on this issue.

Several commentators requested that the final regulations clarify that the individual to whom the card is issued is not the cardholder/payor if another person is responsible for paying the charges on the card. The commentators were concerned that employees might be treated as cardholders in situations where payment cards are issued to employees of the person responsible for paying charges on the card. The final regulations provide the requested clarification.

Several commentators requested that the final regulations clarify that a QPCA may act directly or indirectly through its members, affiliates, or licensees. The final regulations also provide this clarification.

Several commentators requested clarification of the cardholder/payor's obligations if the payor receives notification that a payee is not a qualified payee. Under the final regulations, backup withholding may be required for purchases made more than two months after the last date for furnishing the first notification that the payee is not a qualified payee. For purchases after that date, the payor must backup withhold on any reportable payment unless it has obtained the payee's TIN in accordance with the generally applicable rules under section 3406 or the QPCA has remedied the failure that caused the disqualification by obtaining and verifying the payee's TIN. If the payor is required to backup withhold and ordinarily uses a pay-

ment method incompatible with backup withholding, the continued use of that payment method will not relieve the payor of its backup withholding obligation. (See section 3406(h)(10), which provides payments subject to backup withholding are treated as wages paid by an employer to an employee; and section 3403, which provides that an employer is liable for taxes required to be withheld and deducted.)

## 2. *Effective Dates*

Because the proposed rules relating to backup withholding and information reporting for payment card transactions were not finalized before the beginning of 2004, their effective dates have been delayed. The final rules relating to backup withholding will apply to payments made after 2004 and final rules relating to information reporting will apply to returns due after 2005. The temporary rule permitting agents to participate in the TIN matching program is adopted as a final regulation with no change to its effective date of January 31, 2003.

One payment card organization suggested that the IRS repropose the regulations or issue them with an effective date of not less than two years after publication. The comment noted that reproposing the regulations would provide an opportunity for further study and comment and would provide time to test the rules in a pilot program. This suggestion was not adopted. The IRS and the Treasury Department recognize that providing an opportunity for further comment may result in improved rules, but there is no assurance that this will be the case. The IRS and the Treasury Department believe that the indeterminate benefit suggested in the comment does not outweigh the certainty that the suggested delay would deny payors any benefit from the backup withholding exception and penalty relief contained in the final regulations during the period of the delay.

## **Other Guidance**

The IRS is also issuing two revenue procedures to implement the rules contained in the final regulations. The first of these revenue procedures sets forth the requirements that a payment card organization must satisfy to obtain an IRS determination that it is a QPCA. The revenue procedure also provides that a QPCA may act

on behalf of a cardholder/payor for purposes of soliciting, collecting, and validating the names/TINs of the merchant/payees and on behalf of a merchant/payee for purposes of furnishing the payee's name and TIN to the cardholder/payor.

The second revenue procedure provides an optional procedure for payors and their authorized agents to use in determining whether payment card transactions are reportable under section 6041 or section 6041A and are reportable payments for purposes of the IRS TIN Matching Program. In general, this revenue procedure classifies businesses by Merchant Category Codes (MCCs), or other equivalent Industry Codes, according to whether they predominantly furnish services (for which payments are reportable) or predominantly provide goods (for which payments are not reportable). Under the revenue procedure, payment card organizations would be permitted to assign MCCs, or other equivalent Industry Codes, to payees and payors would be permitted to rely on the assigned codes for information reporting and TIN matching purposes.

## **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. The reporting burden affects payment card organizations and financial institutions that issue payment cards. Most payment card organizations and payment card issuers are large businesses. To the extent that small financial institutions have a reporting burden, the burden is expected to be insignificant. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Ad-

ministration for comment on its impact on small business.

## Drafting Information

The principal author of the regulations is Donna Welch, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

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## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31, 301, and 602 are amended as follows:

### PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the entry for section 31.3406(j)–1T to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

Par. 2. Section 31.3406(g)–1 is amended by adding paragraph (f) to read as follows:

*§31.3406(g)–1 Exceptions for payments to certain payees and certain other payments.*

\* \* \* \* \*

(f) *Special rule for certain payment card transactions*—(1) *In general.* No withholding under section 3406 is required for a reportable payment made through a payment card organization if the payment is made on or after January 1, 2005, the organization is a Qualified Payment Card Agent (QPCA), and—

(i) The payee is a qualified payee (as defined in paragraph (f)(2)(vi) of this section) with respect to the payment; or

(ii) The cardholder/payor made the purchase to which the payment relates no later than two months after the last date prescribed under paragraph (f)(3) of this section for furnishing the QPCA's first notification to the cardholder/payor that the payee is not a qualified payee.

(2) *Definitions*—(i) *Payment card defined.* For purposes of this section, a *pay-*

*ment card* is a card (or an account) issued by a payment card organization, or one of its members, affiliates, or licensees, to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

(ii) *Payment card organization defined.* For purposes of this section, a *payment card organization* is an entity that sets the standards and provides the mechanism, either directly or indirectly through members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization acting directly or indirectly through its members, affiliates, or licensees generally provides such a payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards for payment card transactions.

(iii) *Payment card transaction defined.* For purposes of this section, a *payment card transaction* is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment.

(iv) *Cardholder/payor defined.* For purposes of this section, a *cardholder/payor* is the person that agrees to make payments through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder/payor.

(v) *Qualified Payment Card Agent (QPCA) defined.* For purposes of this section, a *Qualified Payment Card Agent (QPCA)* is a payment card organization that has a current QPCA determination from the Internal Revenue Service (IRS) under applicable procedures (see §601.601(d)(2) of this chapter).

(vi) *Qualified payee defined.* For purposes of this section, a payee is a *qualified payee* with respect to a reportable payment if—

(A) At the time the QPCA makes the payment, the QPCA has obtained the payee's TIN and the payee's TIN has been

validated through the IRS TIN Matching Program; or

(B) The QPCA makes the payment during the six-month period beginning on the date on which the QPCA first makes a payment to the payee.

(3) *Notification of payee status.* In the case of a payment to a payee other than a qualified payee as defined in paragraph (f)(2)(vi) of this section with respect to the payment, the QPCA acting directly or indirectly through its members, affiliates, or licensees must notify the payor that the payee is not a qualified payee. The notification must be furnished during the four-month period beginning on the date on which the QPCA makes the payment. Notification may be provided in a quarterly or other regular report of payee data to the cardholder/payor and may consist of an asterisk, footnote, or other mark next to the payee's name, with the text of the notification at the bottom of the page or at the end of the list of payee data. Notification by the QPCA that a payee is not a qualified payee does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of section 3406(a)(1)(B) and §31.3406(d)–5.

(4) *Time of payment.* A QPCA that makes reports to cardholders on the basis of a calendar quarter or any shorter period (the reporting period) may choose to treat all payments made during the reporting period as being made on the last day of the period for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section. If the QPCA treats payments as being made on the last day of a reporting period, the six-month period in paragraph (f)(2)(vi) of this section and the four-month period in paragraph (f)(3) of this section are treated as beginning on the first day of the reporting period in which the QPCA makes the payment that would otherwise begin the six-month or four-month period.

(5) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples, assume that Q meets all requirements and fulfills all duties necessary to obtain a QPCA determination from the IRS. The examples are as follows:

*Example 1.* (i) Q, a QPCA, enrolls Merchant X on January 20, 2005, to accept the Q payment card as a means for obtaining payment. (The results in this example are the same whether the acts attributed to Q are performed by Q itself or by a member, affiliate, or licensee of Q.) At the time of enrollment, Q obtains

Merchant X's taxpayer identification number (TIN). Merchant X is a sole proprietor engaged in the trade or business of repairing automobiles and trucks. Q's first payment to Merchant X for purchases through the payment card is made on January 31, 2005.

(ii) On March 1, 2005, Q issues a Q payment card to Customer A to use for the purchase of goods or services in the course of its trade or business from merchants that accept the Q payment card. During 2005, Customer A uses Q payment card to purchase repairs to A's vehicles from Merchant X on April 29, 2005, July 29, 2005, and December 19, 2005. Q makes payments for the repairs on May 2, 2005, August 1, 2005, and December 20, 2005. Q provides reports of payee data to each of its cardholders, including Customer A, on the 15<sup>th</sup> of April, July, October, and January for the quarter ending on the last day of the preceding month, but does not choose to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(iii) On March 15, 2005, Q attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program. On March 20, 2005, the IRS notifies Q that the name/TIN furnished by Merchant X does not match IRS data. On June 15, 2005, and September 15, 2005, Q makes further unsuccessful attempts to validate Merchant X's name/TIN through the IRS TIN Matching Program.

(iv) Under paragraph (f)(2)(vi)(B) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 31, 2005 (the date of Q's first payment to Merchant X), and ending on July 30, 2005. Accordingly, the payment on May 2, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(v) Q has not validated Merchant X's TIN at the time of the payments on August 1, 2005, and December 20, 2005. Accordingly, under paragraph (f)(3) of this section, Q must notify Customer A within four months of each of these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the August 1 payment, the notification must be furnished no later than November 30, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(vi) Although Merchant X is not a qualified payee with respect to the payments on August 1, 2005, and December 20, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is November 30, 2005, and the two-month period expires on January 30, 2006. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after January 30, 2006, unless Q has previously succeeded in validating Merchant X's TIN.

*Example 2.* (i) Assume the same facts as in example (1) except that Q chooses to treat payments as being made on the last day of the quarter for purposes of paragraphs (f)(2)(vi) and (f)(3) of this section.

(ii) The payment Q makes on January 31, 2005, is treated under paragraph (f)(4) of this section as being made on March 31, 2005. Similarly, the payments made on May 2, 2005, August 1, 2005, and December 20, 2005, are treated as being made on June 30, 2005, September 30, 2005, and December 31, 2005.

(iii) Under paragraphs (f)(2)(vi)(B) and (f)(4) of this section, Merchant X is treated as a qualified payee for the six-month period beginning on January 1, 2005 (the beginning of the reporting period during which Q makes the first payment to Merchant X), and ending on June 30, 2005. Accordingly, the payment treated as made on June 30, 2005, is a payment to a qualified payee and, under paragraph (f)(1)(i) of this section, is not subject to backup withholding.

(iv) Q has not validated Merchant X's TIN at the time of the payments that are treated as being made on September 30, 2005, and December 31, 2005. Accordingly, under paragraphs (f)(3) and (f)(4) of this section, Q must notify Customer A within four months of the beginning of each reporting period during which Q makes these payments that Merchant X is not a qualified payee with respect to the payments. In the case of the September 30 payment, the notification must be furnished no later than October 31, 2005. Q may provide the notification in its quarterly report of payee data for the July-September quarter furnished on October 15, 2005.

(v) Although Merchant X is not a qualified payee with respect to the payments that are treated as being made on September 30, 2005, and December 31, 2005, paragraph (f)(1)(ii) of this section provides that backup withholding is not required for purchases made no later than two months after the last date prescribed for furnishing the first notification that Merchant X is not a qualified payee. The last date for furnishing the first notification is October 31, 2005, and the two-month period expires on December 31, 2005. Because the payments relate to purchases on July 29, 2005, and December 19, 2005, backup withholding is not required with respect to either payment. Backup withholding may be required with respect to any payment Customer A makes through the Q payment card for purchases from Merchant X after December 31, 2005, unless Q has previously succeeded in validating Merchant X's TIN.

### **§31.3406(j)-1T [Removed]**

Par. 3. Section 31.3406(j)-1T is removed.

Par. 4. Section 31.3406(j)-1 is amended by revising paragraphs (a) and (f) to read as follows:

### **§31.3406(j)-1 Taxpayer Identification Number (TIN) matching program.**

(a) *The matching program.* Under section 3406(i), the Commissioner has the authority to establish Taxpayer Identification Number (TIN) matching programs. The Commissioner may prescribe in a revenue procedure (see §601.601(d)(2) of this chapter) or other appropriate guidance the scope and the terms and conditions

of participating in any TIN matching program. In general, under a matching program, prior to filing information returns with respect to reportable payments as defined in section 3406(b)(1), a payor of those reportable payments who is entitled to participate in the matching program may contact the Internal Revenue Service (IRS) with respect to the TIN furnished by a payee who has received or is likely to receive a reportable payment. The IRS will inform the payor whether or not a name/TIN combination furnished by the payee matches a name/TIN combination maintained in the data base utilized for the particular matching program. For purposes of this section, the term payor includes an agent designated by the payor to participate in TIN matching on the payor's behalf.

\* \* \* \* \*

(f) *Effective date.* The last sentence in paragraph (a) of this section is applicable on January 31, 2003. All other provisions of this section are applicable on and after June 18, 1997.

## **PART 301—PROCEDURE AND ADMINISTRATION**

Par. 5. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

Par. 6. Section 301.6724-1 is amended by:

1. Revising the introductory language of paragraph (c)(6).

2. Adding paragraphs (e)(1)(vi)(H) and (f)(5)(vii).

The revision and additions read as follows:

### **§301.6724-1 Reasonable cause.**

\* \* \* \* \*

(c) \* \* \*

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the actions of the payee or any other person, such as a broker as defined in section 6045(c) or a Qualified Payment Card Agent (QPCA) as defined in §31.3406(g)-1(f)(2)(v) of this chapter, providing information with respect to the return or payee statement, the filer must show either—

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(vi) \* \* \*

(H) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2005, the filer—

(1) Satisfies the solicitation requirements of paragraphs (e)(1)(i) and (ii) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(2) Satisfies the solicitation requirement of paragraph (e)(1)(iii) of this section with respect to such a payment if, on or before December 31 of the year immediately succeeding the calendar year in which the payment is made, the filer undertakes a solicitation of the payee's TIN or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

\* \* \* \* \*

(f) \* \* \*

(5) \* \* \*

(vii) In the case of information returns required to be filed, and information statements required to be furnished, after December 31, 2005, the filer—

(A) Satisfies the solicitation requirement of paragraph (f)(1)(i) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee's TIN; and

(B) Satisfies the solicitation requirement of paragraph (f)(1)(ii) or (iii) of this section, whichever is applicable, with respect to such a payment if, after the date the filer is notified that the account of the payee contains an incorrect TIN and on or before the date by which the applicable requirement must be satisfied, the filer solicits the payee's correct TIN in a manner

that satisfies the applicable requirement or receives from the QPCA a TIN that the filer believes in good faith to be the payee's correct TIN.

\* \* \* \* \*

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In §602.101, paragraph (b) is amended by revising the entry for 31.3406(g)–1 in the table to read as follows:

§602.101 OMB Control numbers.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described

Current OMB Control No.

\* \* \* \* \*

31.3406(g)–1

1545–0096

1545–0112

1545–1819

\* \* \* \* \*

Mark E. Matthews,  
Deputy Commissioner for  
Services and Enforcement.

Approved July 1, 2004.

Gregory Jenner,  
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 12, 2004, 8:45 a.m., and published in the issue of the Federal Register for July 13, 2004, 69 F.R. 41938)