

in some cases, a payor may receive multiple notices of incorrect TIN in different calendar years which relate to the same payee's account for the same year. This may occur where a payor files different types of information returns with respect to the same payee, such as a Form 1099-B (gross proceeds reported by brokers) and a Form 1099-DIV (payment of dividends). Typically these information returns all contain the same TIN, following information contained in the payor's records. Variations in the processing of such returns by the IRS may result in the issuance of incorrect TIN notices at different times.

The amendments to the regulations provide that two or more notices of incorrect TIN relating to the same payee and the same year, but which are received in different calendar years, count as one notice. Accordingly, a payor who sends a first "B" notice to the payee after receipt of the first notice of incorrect TIN would not be required to send a second "B" notice after receipt of the second notice of incorrect TIN if the second notice relates to an information return filed for the same year as the first notice.

#### Section 6724

Section 6724 provides for a waiver of information reporting penalties under sections 6721 through 6723 where the failure giving rise to such penalties was due to reasonable cause and not willful neglect. Under § 301.6724-1(a) of the regulations, in order to prove reasonable cause for a failure, the filer must establish either that there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer's control. In addition, the filer must have acted in a responsible manner both before and after the failure.

Section 301.6724-1(c)(1)(v) of the regulations provides that certain actions of the payee or another person providing necessary information with respect to the return may be an event beyond the filer's control. Thus, a payee's furnishing of an incorrect TIN to a payor may be an event beyond the payor's control.

As provided in § 301.6724-1(a), the payor must also act in a responsible manner with respect to the failure. That section sets forth special rules for acting in a responsible manner with respect to incorrect TINs. The filer is required to make an initial solicitation for the payee's correct TIN at the time the account is opened, and up to two annual solicitations following receipt of penalty notices.

If a filer receives a penalty notice with respect to an incorrect payee TIN and a

notice of incorrect TIN under section 3406(a)(1)(B) during the same calendar year for the same payee, the filer will satisfy the section 6724 annual solicitation requirements by sending the required "B" notice. The filer does not have to make another solicitation pursuant to section 6724.

The amendments to the regulations address the situation where a filer receives a section 3406(a)(1)(B) notice with respect to a payee in one year, and the following year receives a penalty notice with respect to the same payee and the same year as the section 3406(a)(1)(B) notice. The amendments provide that the filer is not required to make an annual solicitation for the payee's TIN pursuant to section 6724 in this situation, provided the filer has sent the required B notice.

The written comments received expressed the view that the proposed regulations clarified the backup withholding rules and reduced the regulatory burden associated with backup withholding. No revisions to the proposed amendments were suggested by commentators.

#### 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, and, because the regulation does not impose a collection of information of small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

#### Drafting Information

The principal author of these regulations is Nancy L. Rose of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

#### List of Subjects

##### 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

##### 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

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

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

■ 1. The authority citation for part 31 continues to read in part as follows:

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

■ 2. Section 31.3406(d)-5 is amended by revising paragraphs (d)(2)(ii) and (g)(4) to read as follows:

**§ 31.3406(d)-5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Two or more notices for an account for the same year or received in the same year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, need only send one notice to the payee under this section.

\* \* \* \* \*

(g) \* \* \*

(4) *Receipt of two notices for the same year or in the same calendar year.* A payor who receives, under the same payor taxpayer identification number, two or more notices under paragraph (c)(1) or (2) of this section with respect to the same payee's account for the same year, or in the same calendar year, must treat such notices as one notice for purposes of this paragraph (g).

\* \* \* \* \*

#### PART 301—PROCEDURE AND ADMINISTRATION

■ 3. The authority citation for part 301 continues to read in part as follows:

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

■ 4. Section 301.6724-1 is amended as follows:

■ 1. Amending paragraph (f)(1)(ii), fourth sentence, by removing "(n)" after "section 6721".

■ 2. Revising paragraphs (f)(2) and (f)(3).

■ 3. Amending paragraph (f)(5)(vi), last sentence, by removing the language "paragraph (f)(2)" and adding "paragraph (f)(3)" in its place.

■ 4. Amending paragraph (g)(1) by removing the language "as provided under section 6724(c)(1)".