

demonstrate the reliability of its data by participating in the IRS TIN Matching Program and matching its merchant name/TIN data with IRS name/TIN data.

Certain payment card industry representatives have suggested that, for payments made through a QPCA, the information provided to the cardholder/payor should be sufficiently reliable that backup withholding should not apply. In addition, they have suggested that a cardholder/payor who files incorrect information returns should be considered to meet the reasonable cause requirements for a waiver under section 6724 if the cardholder/payor relied on payee information provided by a QPCA.

The IRS and the Treasury Department agree that QPCAs, by obtaining TINs and participating in the IRS TIN Matching Program, can enhance the accuracy of information reporting by the cardholder/payors. Accordingly, the IRS and the Treasury Department agree that a limited exception to the backup withholding requirements is appropriate if cardholder/payors rely on a QPCA to solicit, collect, and validate merchant/payees' TINs. In addition, the IRS and the Treasury Department agree that cardholder/payors may establish reasonable cause based on reliance on merchant/payees' TINs supplied through a QPCA.

Explanation of Provisions

1. Backup Withholding

The proposed regulations provide that backup withholding does not apply to payment card transactions if the reportable payments are made through a QPCA and the payee is a qualified payee. The proposed regulations provide that a payee is qualified 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 6-month period following the date on which the QPCA first obtained the payee's TIN.

The proposed regulations provide that reportable payments made through a QPCA are also 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. 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 regulations clarify that this notification does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of backup withholding.

2. Waiver Under Section 6724 for Reasonable Cause

The proposed regulations provide that a cardholder/payor may establish reasonable cause based on its reliance on a QPCA. Under the proposed regulations, special solicitation rules will apply if the cardholder/payor relies on a QPCA. Under those rules, a cardholder/payor is not required to make the initial solicitation of a payee's TIN at the time of the transaction and generally is not required to undertake the first and second annual solicitations. Under the proposed regulations, a cardholder/payor that relies on a QPCA is required to solicit a payee's TIN only if the QPCA fails to provide, within a specified period, a TIN that the cardholder/payor believes in good faith to be the payee's correct TIN.

3. Effective Dates

Section 31.3406(j)-1(a) and (f) are applicable January 31 2003. The amendments of § 31.3406(g)-1 are proposed to be applicable for payments on or after January 1, 2004. The amendments of § 301.6724-1 are proposed to be applicable for information returns required to be filed, and information statements required to be furnished, after December 31, 2004. The amendments to §§ 31.3406(g)-1 and 301.6724-1 will not be applicable until they are finalized.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 financial institution members of the payment card network that are affiliates of QPCAs. Most of these financial institution members 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), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 21, 2003, beginning at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be permitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight copies by April 30, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

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.

List of Subjects

26 CFR Part 31

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