



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-112829-25]

RIN 1545-BR80

Backup Withholding on Third Party Network Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations governing backup withholding. The proposed regulations reflect recent changes to the statutory law. These changes will affect third party settlement organizations who make payments in settlement of third party network transactions.

DATES: Electronic or written comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-112829-25) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG-112829-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Casey Conrad at (202) 317-6844 (not toll-free number); concerning submission of comments or requests for a hearing, the Publications and Regulations Section at (202) 317-6901 (not toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Employment Taxes and Collection of Income Tax at the Source Regulations (26 CFR Part 31) under section 3406 of the Internal Revenue Code (Code). The proposed regulations are issued under the authority conferred by section 3406(i), which provides the Secretary of the Treasury or the Secretary's delegate (Secretary) with authority to "prescribe such regulations as may be necessary or appropriate to carry out the purposes of [section 3406]."

The proposed regulations are also issued pursuant to section 7805(a) of the Code, which authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

This document contains proposed amendments to regulations impacted by amendments to sections 6050W and 3406 of the Code made by section 70432 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBA).

I. Section 6050W

Section 6050W requires payment settlement entities, including merchant acquiring entities and third party settlement organizations (TPSOs), to report certain payments made to participating payees for reportable payment transactions. Section 6050W(b) requires TPSOs to file information returns reporting the gross amounts of

reportable payments made in settlement of third party network transactions. As originally enacted by the Housing Assistance Tax Act of 2008, Public Law 110-289, 122 Stat. 2908 (July 30, 2008), section 6050W required TPSOs to file information returns if payments to a payee exceeded \$20,000 and 200 transactions in a calendar year. In 2021, the American Rescue Plan Act of 2021 (ARPA), Public Law 117-2, 135 Stat. 4 (March 11, 2021), amended section 6050W(e) to lower the TPSO reporting threshold, requiring reporting by TPSOs when payments to a payee exceeded \$600 in a calendar year, without regard to the number of transactions. OBBBA section 70432(a) retroactively reverted the reporting threshold to the pre-ARPA level, requiring reporting by a TPSO when payments to a payee exceed \$20,000 and 200 transactions in a calendar year. OBBBA section 70432(a)(2) provides that this change “shall take effect as if included in section 9674 of the American Rescue Plan Act.” These payments are reported on a Form 1099-K, *Payment Card and Third Party Network Transactions*.

II. Section 3406

Section 3406(a) requires backup withholding for reportable payments where certain conditions are met. Pursuant to section 3406(b)(3)(F), a reportable payment includes payments required to be shown on a return required under section 6050W. Generally, under section 3406(b)(4), whether a payment is reportable is determined without regard to the minimum amount that must be paid before a return is required.

OBBA section 70432(b)(1) amended section 3406(b) by adding a new paragraph (8) that applies to calendar years beginning after December 31, 2024. Section 3406(b)(8)(A) provides that any payment in settlement of a third party network transaction required to be shown on a return required under section 6050W that is made during any calendar year is treated as a reportable payment only if (1) the aggregate number of transactions with respect to the participating payee during such calendar year exceeds the number of transactions specified in section 6050W(e)(2),

and (2) the aggregate dollar amount of transactions with respect to the participating payee during such calendar year exceeds the dollar amount specified in section 6050W(e)(1) at the time of such payment.

Section 3406(b)(8)(B) provides that section 3406(b)(8)(A) does not apply with respect to payments to any participating payee during any calendar year if one or more payments in settlement of third party network transactions made by the payor to the participating payee during the preceding calendar year were reportable payments.

Explanation of Provisions

Because the existing regulations under section 6050W already reflect the reporting threshold as codified in the OBBBA, the proposed regulations would not alter the existing text of the regulations under section 6050W.

The proposed regulations would update the regulations under section 3406 to reflect the statutory changes made to section 3406(b) by the OBBBA. The proposed regulations would clarify that in the case of payments made in settlement of third party network transactions, the amount subject to withholding under section 3406 is determined with regard to the exception for de minimis payments by TPSOs in section 6050W(e) and the associated regulations. Thus, under the proposed regulations, a payment would be treated as a reportable payment under §31.3406(b)(3)-5(a) only if (1) the aggregate number of transactions with respect to the participating payee during the calendar year exceeds the number of transactions specified in section 6050W(e)(2) (currently 200); and (2) the aggregate dollar amount of the current transaction and all previous transactions to the participating payee during the calendar year exceeds the dollar amount specified in section 6050W(e)(1) at the time of such payment (currently \$20,000).

The proposed regulations would also clarify that the amount subject to withholding is the entire amount of the transaction that causes either the total number of

transactions to exceed the number of transactions specified in section 6050W(e)(2), or the entire amount of the transaction that causes the total dollar amount paid to the payee to exceed the dollar amount specified in section 6050W(e)(1) at the time of such payment, whichever occurs later, and the amount of any subsequent transactions made to the payee during the calendar year.

Finally, the proposed regulations would clarify that the exception in proposed §31.3406(b)(3)-5(b)(2) would not apply with respect to payments to any participating payee during any calendar year if one or more payments in settlement of third party network transactions made by the payor to the participating payee during the preceding calendar year were reportable payments.

Proposed Applicability Date

These regulations are proposed to apply with respect to payments made in calendar years beginning after December 31, 2024.

Effect on Other Documents

Notice 2023-10, 2023-3 I.R.B. 403, Notice 2023-74, 2023-51 I.R.B. 1484, and Notice 2024-85, 2024-51 I.R.B. 1349 are inconsistent with the statutory revisions and are obsoleted as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Special Analyses

I. Regulatory Planning and Review

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether that collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 OMB.

The collection of information in these proposed regulations relates to recordkeeping and information reporting with respect to backup withholding in proposed §31.3406(b)(3)-5. The collected information will be used by the payor to determine whether payments to the payee exceed a threshold that would require backup withholding and the issuance of an information return. The burden for these requirements is included with the Form and Instructions for Form 945, *Annual Return of Withheld Federal Income Tax*. The Form 945 and Instructions for Form 945 are approved under OMB control number 1545-0029 and the associated burden is included in the estimates shown in the Instructions for Form 941. The Form 941 and its instructions are in the process of being updated, and any decrease in burden associated with the statutory changes to section 3406 will be reflected in those instructions.

III. Regulatory Flexibility Act

It is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The proposed rule would affect any entity required to file information returns reporting payments of third party network transactions. The proposed regulation could affect a substantial number of small entities; however, the economic impact of the proposed regulations is not likely to be significant because the proposed regulations would not impose any new requirements on small entities.

Rather, the proposed rules would clarify the threshold at which entities are required to backup withhold for reportable payments where certain conditions are met. Because the threshold to backup withhold would increase under the proposed rules, the proposed rules would reduce the frequency with which entities must backup withhold. Thus, the economic impact of these proposed regulations is not likely to be significant.

Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these proposed regulations on small entities.

IV. Submission to Small Business Administration

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and

do not preempt State law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Any electronic and paper comments submitted will be available at <https://www.regulations.gov> or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the ***Federal Register***.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 31

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

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR

part 31 as follows:

PART 31--EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

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

Authority: 26 U.S.C. 7805.

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Sections 31.3406(a)-1 through 31.3406(i)-1 also issued under 26 U.S.C. 3406(i).

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Par. 2. Section 31.3406(a)-1 is amended by revising paragraphs (a) and (c), and adding paragraph (e) to read as follows:

§31.3406(a)-1 Backup withholding requirements on reportable payments.

(a) *Overview.* Under section 3406 of the Internal Revenue Code (Code), a payor must deduct and withhold an amount equal to the product of the fourth lowest rate of tax applicable under section 1(c) of the Code and a reportable payment if a condition for withholding exists. Reportable payments mean interest and dividend payments (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)). The conditions described in paragraph (b)(1) of this section apply to all reportable payments, including reportable interest and dividend payments. The conditions described in paragraph (b)(2) of this section apply only to reportable interest and dividend payments.

* * * * *

(c) *Exceptions.* The requirement to withhold does not apply to certain *de minimis* payments as described in §§31.3406(b)(3)-1(a)(3), 31.3406(b)(3)-5(b)(2), and 31.3406(b)(4)-1 or to payments exempt from withholding under §§31.3406(g)-1 through 31.3406(g)-3.

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(e) *Applicability date.* The provisions of this section apply with respect to payments made in calendar years beginning after December 31, 2024.

Par. 3. Section 31.3406(b)(3)-5 is amended by revising paragraphs (b) and (e) to read as follows:

§31.3406(b)(3)-5 Reportable payments of payment card and third party network transactions.

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(b) *Amount subject to backup withholding--(1) In general.* The amount described in paragraph (a) of this section that is subject to withholding under section 3406 is the amount subject to reporting under section 6050W.

(2) *Third party network transactions.* In the case of payments made in settlement of third party network transactions, the amount subject to withholding under section 3406 is determined with regard to the exception for *de minimis* payments by third party settlement organizations in section 6050W(e). A payment is treated as a reportable payment under paragraph (a) of this section only if, during the calendar year, the aggregate number of transactions with respect to the participating payee exceeds the number of transactions specified in section 6050W(e)(2) and the aggregate amount of all reportable payment transactions with respect to such participating payee exceeds the dollar amount specified in section 6050W(e)(1). The amount subject to withholding is the entire amount of the transaction that causes either the total number of transactions to exceed the number of transactions specified in section 6050W(e)(2), or the entire amount of the transaction that causes the total amount paid to the participating payee to exceed the dollar amount specified in section 6050W(e)(1) at the time of such payment, whichever occurs later, and the amount of any subsequent transactions made to the participating payee during the calendar year.

(3) *Exception.* Paragraph (b)(2) of this section does not apply with respect to payments to any participating payee during any calendar year if one or more payments in settlement of third party network transactions made by the payor to the participating payee during the preceding calendar year were reportable payments.

(4) *Examples.* The provisions of paragraph (b) of this section are illustrated by the following examples:

(i) *Example 1.* Platform A is a third party settlement organization (as defined in §1.6050W-1(c)(2) of this chapter) and Y is a participating payee (as defined in §1.6050W-1(a)(5)(i)(B) of this chapter). A complies with all the requirements to solicit a taxpayer identification number (TIN) from Y, but Y does not provide its TIN to A. During calendar year 2026, A makes 201 payments in settlement of third party network transactions that total \$20,000.01. A must backup withhold under paragraph (b)(2) of this section on the entire amount of the 201st transaction because that transaction caused Y to exceed the *de minimis* reporting threshold for calendar year 2026 of 200 transactions and \$20,000 in gross payments.

(ii) *Example 2.* The facts are the same as in paragraph (b)(4)(i) of this section (*Example 1*). During calendar year 2027, A makes 199 payments in settlement of third party network transactions that total \$18,000.00. A must backup withhold on each payment made to Y in settlement of a third party network transaction during 2027 under paragraph (b)(3) of this section because one or more payments in settlement of third party network transactions made by A to Y during the preceding calendar year (2026) were reportable payments.

(iii) *Example 3.* The facts are the same as in paragraph (b)(4)(ii) of this section (*Example 2*). During calendar year 2028, A makes four payments in settlement of third party network transactions that total \$2,000.00. A must backup withhold on each payment made in settlement of a third party network transaction during 2028 under

paragraph (b)(3) of this section because one or more payments in settlement of third party network transactions made by A to Y during the preceding calendar year (2027) were reportable payments.

(iv) *Example 4.* The facts are the same as in paragraph (b)(4)(iii) of this section (*Example 3*). During calendar year 2029, A made no payments in settlement of third party network transactions, and during calendar year 2030, A makes 199 payments in settlement of third party network transactions that total \$18,000.00. A is not required to backup withhold on any payment made in settlement of third party network transactions during calendar year 2030 because A did not make any reportable payments to Y during the preceding calendar year (2029), and A did not make payments in settlement of third party network transactions that exceed the *de minimis* reporting threshold.

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(e) *Applicability date.* The provisions of this section apply with respect to payments made in calendar years beginning after December 31, 2024.

Frank J. Bisignano,
Chief Executive Officer