[4831-GV-p

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 10053]

RIN 1545-BR80

Backup Withholding on Third Party Network Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations governing backup withholding on reportable payments with respect to third party network transactions. The final regulations reflect recent changes to the statutory law that affect the backup withholding requirements for third party settlement organizations who make payments in settlement of third party network transactions.

DATES: *Effective date*: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability dates: For dates of applicability, *see* §§ 31.3406(a)-1(e) and 31.3406(b)(3)-5(e).

FOR FURTHER INFORMATION CONTACT: Casey Conrad, Office of Associate Chief Counsel (Procedure and Administration) at (202) 317-6844 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document contains amendments to the Regulations on Employment Taxes and Collection of Income Tax at the Source (26 CFR part 31) under section 3406 of the Internal Revenue Code (Code). The final regulations are issued under the authority conferred by section 3406(i) of the Code, 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 final 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 amendments to regulations under 26 CFR part 31. On January 9, 2026, the Department of the Treasury (Treasury Department) and the IRS published in the ***Federal Register*** (91 FR 934) a notice of proposed rulemaking (REG-112829-25) proposing amendments to the regulations governing backup withholding on third party network transactions under section 3406 (proposed regulations) to reflect the statutory changes made to section 3406(b) by section 70432 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA). No public hearing was requested or held with respect to the proposed regulations.

The Treasury Department and the IRS received eight comments in response to the proposed regulations. After consideration of these comments, the proposed regulations are adopted without change. To the extent not inconsistent with the Summary of Comments section of this preamble, the Explanation of Provisions section of the preamble to the proposed regulations is incorporated in this document.

Summary of Comments

One commenter suggested that the changes to the final regulations take place prospectively only. The final regulations do not adopt this comment. The changes to section 3406 made by section 70432(b)(1) of the OBBBA apply to calendar years beginning after December 31, 2024. These final regulations remove provisions from the existing regulations that conflict with section 3406, as amended by the OBBBA, and implement the changes to section 3406 made by the OBBBA. Thus, to prevent taxpayer confusion that might arise from a conflict between the statutory text of section 3406 and the text of the regulations, and to adhere to the effective date prescribed in the OBBBA by Congress for the changes made to section 3406, the applicability date for these final regulations mirrors the effective date of section 70432(b)(1) of the OBBBA (that is, the final regulations apply with respect to payments made in calendar years beginning after December 31, 2024), consistent with the proposed regulations.

One commenter expressed general support for the proposed regulations but recommended that the Treasury Department and the IRS include additional information in the preamble to this Treasury decision. The commenter recommended the Treasury Department and the IRS add a compliance-and-enforcement-implications section to this preamble to reduce tax controversy disputes and clarify that: (1) the taxability of income is not affected by the absence of a Form 1099-K, *Payment Card and Third Party Network Transactions*, or the absence of backup withholding on payments made in settlement of third party network transactions; (2) the new de minimis threshold for backup withholding does not create a safe harbor for structuring, account-splitting, or other conduct intended to avoid information reporting or backup withholding; and (3) that the IRS may use enforcement tools during an examination to confirm the amount of a taxpayer's income regardless of whether a taxpayer exceeds the de minimis third party settlement organization (TPSO) reporting or backup withholding threshold.

Although these recommendations are outside of the scope of these regulations, the Treasury Department and the IRS agree that it is important to emphasize that the taxability of payments and the reportability of income on an income tax return are not determined by whether the IRS or the taxpayer receives a Form 1099-K, or by whether backup withholding is required with respect to a third party network transaction.

This commenter also recommended that the Treasury Department and the IRS clarify that TPSOs are responsible for internally aggregating multiple accounts with identical identifying information indicating common beneficial ownership or the same taxpayer identification number. Although this comment is also outside of the scope of these regulations, the Treasury Department and the IRS agree that it is helpful to clarify that the de minimis TPSO reporting and backup withholding thresholds referenced throughout this Treasury decision apply with respect to each participating payee, as defined by section 6050W(d)(1).

Three commenters expressed concerns that the proposed regulations were confusing or could be drafted more clearly, but none suggested any alternative language or clarifying edits. The final regulations do not make any changes with respect to these comments, as the final regulations merely implement statutory changes in response to changes made by section 70432(b)(1) of the OBBBA.

One commenter submitted three separate comments and attached documents. In one comment, the commenter requested that the IRS transmit the commenter's comment and all related materials to the Office of Management and Budget (OMB), the Office of Information and Regulatory Affairs (OIRA), the Government Accountability Office (GAO), and the Department of the Treasury Office of Inspector General for independent review under the Paperwork Reduction Act, the Administrative Procedure Act, the Regulatory Flexibility Act, and various Executive Orders governing regulatory review, economic impact, and burden reduction. The commenter suggested that the Treasury Department and the IRS failed to comply with relevant administrative requirements in promulgating the proposed regulations, or at the least understated the expected burden and economic impact on taxpayers.

The Treasury Department and the IRS complied with all relevant administrative laws, including the Paperwork Reduction Act, the Administrative Procedure Act, the

Regulatory Flexibility Act, and applicable Executive Orders in the promulgation of the proposed regulations and these final regulations. The description of the Treasury Department and the IRS's compliance with these administrative requirements can be found in the Special Analyses section of the proposed regulations and the Special Analyses section in this Treasury decision.

The commenter also submitted thirty attachments that consisted of requests and demands, the substantial majority of which were outside of the scope of the proposed regulations. For example, the commenter requested that the Treasury Department and the IRS coordinate with the Commodity Futures Trading Commission (CFTC) to issue joint guidance clarifying that CFTC commodity classification governs the section 3406 backup withholding treatment of digital commodity settlement payments. The commenter also requested that the Treasury Department and the IRS exempt certain types of payments from all backup withholding, including patent royalty payments, dividend payments, and payments for defense-related goods and services to defense technology companies registered under International Traffic in Arms Regulations (22 CFR parts 120 through 130). No changes were made based on these comments because these final regulations are limited to backup withholding on third party network transactions, not any broader issues related to backup withholding.

The remaining comments were tangentially related to the subject matter of the proposed regulations on their face but are nonetheless outside of the scope of these regulations. For example, one commenter requested that the Treasury Department and the IRS analyze the impact of adopting different section 6050W de minimis TPSO reporting thresholds and adopt the commenter's desired threshold of $200,000 in payments and 10,000 transactions. The Treasury Department and the IRS lack the authority to change the statutorily prescribed amount of the de minimis TPSO reporting threshold in these final regulations. Instead, the final regulations implement the statutory requirement under section 3406, as amended by section 70432(b)(1) of the OBBBA, to align the backup withholding threshold for third party network transactions with the de minimis TPSO reporting threshold under section 6050W.

To the extent a comment, or portion of a comment, was not discussed in this preamble, the Treasury Department and the IRS determined that the comment, or portion of the comment, pertained to topics outside of the scope of these final regulations.

Special Analyses

I. Regulatory Planning and Review

These final 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 OMB regarding review of tax regulations.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. The final regulations affect any entity required to file information returns reporting payments of third party network transactions. The final regulations could affect a substantial number of small entities; however, the economic impact of the final regulations is not likely to be significant because the final regulations do not impose any new requirements on small entities. Rather, the final regulations 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 on third party network transaction payments increases under the final regulations, the final regulations would reduce the frequency with which entities must backup withhold. Thus, the economic impact of these final regulations is not likely to be significant.

III. 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 final regulations relates to recordkeeping and information reporting with respect to backup withholding in §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 Ta*x. 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 were updated in March 2026, and any decrease in burden associated with the statutory changes to section 3406 is reflected in those instructions because the burden estimates were based on statutory requirements in effect as of October 1, 2025, which includes the amendments made by section 70432(b)(1) of the OBBBA.

IV. Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

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 final 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 final 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.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

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 final 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 requirements, Social security, Unemployment compensation.

Amendments to the Regulations

Accordingly, the Treasury Department and the IRS 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.

* * * * *

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 requirement 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.

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(c) *Exceptions*. The requirement to withhold does not apply to certain de minimis payments as described in §§31.3406(b)(3)-1(b)(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 this paragraph (b) 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.

Approved: July 23, 2026.

Kevin M. Salinger,

Acting Assistant Secretary of the Treasury (Tax Policy).

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