

§ 31.3406(a)-3

26 CFR Ch. I (4-1-02 Edition)

(b) *Middlemen treated as payors.* A person who receives or collects a reportable payment on behalf of or for the account of a payee is a middleman and is treated as the payor of the payment. These persons include, but are not limited to—

(1) A custodian of a payee's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(2) A nominee, including the joint owner of an account or instrument, except if the joint owners are husband and wife or if the payment is actually owned by another person whose name is also shown on the information return filed with respect to the payment;

(3) A broker holding a security (including stock) for a customer in street name;

(4) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors, and for this purpose spouses filing a joint return are considered to be one grantor;

(5) A common trust fund; and

(6) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* The following persons are not treated as payors for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates:

(1) An agent of the payor who is acting on behalf of the payor in making the payment and who has not entered into an agreement with the payor (for further guidance see Rev. Proc. 84-33 (1984-1 C.B. 502), and §601.601(d)(2) of this chapter), such as a bank that acts as a paying agent in making a payment of dividends on behalf of a corporation (although payments made by the agent are considered to be payments made by the payor, and thus are subject to withholding, reporting, and the depositing requirements pertaining to section 3406 as if they were made by the payor itself, and failure by the agent so to withhold, report, or deposit is considered to be failure by the payor);

(2) A trust (other than a grantor trust as described in paragraph (b)(4) of this section) that files a Form 1041 and furnishes each beneficiary a Form K-1 containing information required to be

shown on an information return, including amounts withheld under section 3406; or

(3) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

[T.D. 8637, 60 FR 66114, Dec. 21, 1995]

§ 31.3406(a)-3 Scope and extent of accounts subject to backup withholding.

A payor who is required to withhold under §31.3406(a)-1 must withhold—

(a) On the accounts subject to withholding under §31.3406(a)-1 (b)(1)(i) or (b)(2)(ii); and

(b) On the accounts subject to withholding under §31.3406(a)-1(b)(1)(ii) or (b)(2)(i), as described under §31.3406(d)-5 (relating to notification of incorrect TIN) or §31.3406(c)-1 (relating to notified payee underreporting), respectively.

[T.D. 8637, 60 FR 66114, Dec. 21, 1995]

§ 31.3406(a)-4 Time when payments are considered to be paid and subject to backup withholding.

(a) *Timing—(1) In general.* If backup withholding is required under section 3406 on a reportable payment (as defined in section 3406(b)), the payor must withhold at the time it makes the payment to the payee or to the payee's account that is subject to withholding. Amounts are considered paid when they are credited to the account of, or made available to, the payee. Amounts are not considered paid solely because they are posted (e.g., an informational notation on the payee's passbook) if they are not actually credited to the payee's account or made available to the payee. See paragraph (c) of this section for the timing of withholding by a middleman.

(2) *Special rules for dividends.* For purposes of section 3406 and this section—

(i) *Record date earlier than payment date.* In the case of stock for which the record date is earlier than the payment date, the dividends are considered paid on the payment date.

(ii) *Dividends paid in corporate reorganizations.* In the case of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends that have