

IRPAC 2008

Excerpt from 2008 Emerging Compliance Issues Subgroup Report (Information Reporting Program Advisory Committee to the Internal Revenue Service)

B. To obtain written guidance on whether Treasury Regulation § 31.3406(d)-1(b)(2)(iv)(A) requires an acquiring payor to resolicit taxpayer identification numbers (“TIN”) from each affected account holder when it acquires accounts from a third-party payor who has been making reportable payments subject to the Form W-9 certification requirements. For purposes of this issue “acquires accounts” means accounts acquired by voluntary and involuntary means (e.g., merger and acquisitions, change of transfer agents, change of plan administrators for employee plans, etc.).

Discussion

Generally, Treasury Regulation §31.3406(d)-1(b)(2)(iv)(A) provides that if a payor acquires accounts of another payor, the acquiring payor must treat the affected account holders as being required to furnish a TIN.

In past years, and today, it appears that the industry practice in the financial services sector is not to resolicit TINs from the holders of the accounts that have been either purchased or transferred from another payor. This practice is not based on published IRS guidance, although Treasury Regulation § 35a.9999-3 Q&A 101 allows it to the extent that regulation remains in force. In practice, it appears, the selling payor will “certify” to acquiring payor that the TINs on the sold/transferred accounts are accurate. In light of current financial accounting standards that require disclosure of certain liabilities, financial services payors often need to reevaluate the industry practice since the regulation is not clear.

Many financial institutions are now choosing to undertake the costly and time-consuming expense of resoliciting Forms W-9 from the holders of the accounts that the payor has acquired. This action protects a financial institution from (a) making a tax liability disclosure that will negatively impact its financial statements, and (b) taking the risk that industry practice could be challenged in the future, thus subjecting the entity to IRS penalties and other accounting regulatory penalties.

Other Consideration:

If guidance is issued, the B and C Notice requirements to the acquiring entity will be affected. If a Form W-9 is not required to be resolicited, does the acquiring payor “step into the shoes” of the selling payor?

Recommendation

We recommend that guidance is published, whether via an IRS Notice or through the forms and instructions, so that payors have a clear understanding of their responsibilities when accounts receiving dividends and/or interest are acquired.

We suggest that the guidance provide that:

1. A certified TIN is not required to be resolicited by the acquiring payor;
- 2.

The selling payor provides the acquiring payor written notification of (a) all pre-1984 accounts and their corresponding TINs, and

(b) all post-1983 accounts and corresponding TINs;

3.

With respect to B and C Notices, the acquiring payor “steps into the shoes” of the selling payor with respect to B and C Notice history. The selling payor will provide the acquiring payor with the first and second B Notice history for each acquired account to enable the acquiring payor to properly use the 2 in 3 rule; and

4.

With respect to post-acquisition B and C Notices, the selling payor is not required to forward B and C Notices received to the acquiring

payor. Consideration should be given to the responsibilities of the selling payor when B and C Notices are received around the effective date for an acquisition.

IRS Response / Action

The IRS understood the need for clarification and offered good suggestions on ways to clarify the issue. IRPAC was requested to submit a formal request to have the resolicitation issue added to the IRS’ Guidance Priority List, which IRPAC did in April 2008.