

## FREQUENTLY ASKED QUESTIONS

### 1. Q... What is backup withholding?

A... Persons (payers) making certain payments to payees must withhold and pay to the IRS a specified percentage (see “BWH Rate” on page 3) of those payments under certain conditions. Payments that may be subject to backup withholding include interest, dividends, rents, royalties, commissions, non-employee compensation, and other payments including broker proceeds and barter exchange transactions, reportable gross proceeds paid to attorneys, and certain payments made by fishing boat operators. Payments that are excluded from backup withholding are real estate transactions, foreclosures and abandonments, cancelled debts, distributions from Archer Medical Savings Accounts (MSAs), long-term care benefits, distributions from any retirement account, distributions from an employee stock ownership plan (ESOP), fish purchases for cash, unemployment compensation, state or local income tax refunds, and qualified tuition program earnings.

### 2. Q... What is a Taxpayer Identification Number (TIN)?

A... A TIN is a Social Security Number (SSN) issued by the Social Security Administration (SSA) or an Employer Identification Number (EIN) issued by the IRS. A TIN can have only nine (9) numbers. It cannot have more or less than nine numbers nor can it have letters. See Question #3 for information on ITINs and ATINs.

### 3. Q... What is an Individual Taxpayer Identification Number (ITIN)/Adoption Taxpayer Identification Number (ATIN)?

A... An ITIN is an individual Taxpayer Identification Number (ITIN) issued by the IRS and may be used as a TIN to meet federal tax obligations only. Resident aliens and nonresident aliens, who are not eligible for SSNs, use ITINs. An ITIN has nine numbers in the same format as an SSN and always begins with the number 9. The fourth and fifth digits are always within the range of 70 through 88. An ATIN is an Adoption Taxpayer Identification Number issued by the IRS and can be used as a TIN. An ATIN is only a temporary taxpayer identification number issued for a child born, and adopted, in the United States. An ATIN contains nine numbers in the same format as an SSN. An ATIN should be requested when an SSN cannot be obtained in time to file your tax return. Once the adoptive parent obtains an SSN for the adopted child, the ATIN becomes obsolete.

### 4. Q... What payments are subject to backup withholding?

A... a) Rents and commissions, non-employee compensation for services, royalties, reportable gross proceeds paid to attorneys and other fixed or determinable gains, profits, or income payments reportable on Form 1099-MISC, Miscellaneous Income.  
b) Interest reportable on Form 1099-INT, Interest Income.  
c) Dividends reportable on Form 1099-DIV, Dividends and Distributions.  
d) Patronage dividends paid in money or qualified check reportable on Form 1099-PATR, Taxable Distributions Received From Cooperatives.  
e) Original issue discount reportable on Form 1099-OID, Original Issue Discount, if the payment is in cash.  
f) Gross proceeds reportable on Form 1099-B, Proceeds From Broker and Barter Exchange Transactions.  
g) Gambling winnings reportable on Form W-2G, Certain Gambling Winnings, unless subject to regular gambling withholding. If not subject to regular gambling withholding, backup withholding only applies if, and only if, the payee does not furnish a taxpayer identification number to the payor.

### 5. Q... Can a payee claim he or she is exempt from backup withholding?

A... Yes. Payees who may be exempt are listed in the “Instructions for the Requester of Form W-9”. They include tax-exempt organizations, government agencies, corporations (For certain payments), and other listed entities.

**6. Q... Is a payee an exempt corporation if it uses the term “Company” or “Co.” in its name?**

**A...** A payer cannot treat a payee as an exempt organization merely because the business name contains the word “Company” or “Co.” A payer may treat a payee as exempt if:

- the name contains the term insurance company, indemnity company, reinsurance company or assurance company. Requirement one is also met if the entities name indicates that it is an entity listed as a corporation under IRS Regulations, section 301.7701-2(b)(8)(i),
- the payer has on file a corporate resolution or similar document clearly indicating corporate status,
- the payer receives a Form W-9 which includes an EIN and a statement from the payee that it is a domestic corporation or,
- the payer receives a withholding certificate described in Section 1.1441-1(e) (2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

**7. Q... When is a TIN considered missing or incorrect?**

**A...** Missing TIN - We consider a TIN to be missing if it is not provided, has more or less than nine numbers, or it has an alpha character as one of the nine positions.

**Example: Missing SSN: 123-45-678**

**Example: Missing SSN: 123-45-67899**

**Example: Missing EIN: 12- 345678P**

**Incorrect TIN** - We consider a TIN incorrect if it is in the proper format but the Name/TIN combination does not match or cannot be found on IRS or SSA files.

Examples of Proper Format:

Correct SSN:123-45-6789

Correct EIN: 12-3456789

**8. Q... What files do the IRS use in the matching process?**

**A...** The DM-1 File -- A file containing all SSNs ever issued by the SSA

The EIN-Name Control File -- A file containing all the IRS-assigned EINs

The ITIN File -- A file containing all the IRS-assigned ITINs (On DM-1)

The ATIN File -- A file containing all the IRS-assigned ATINs (On DM-1)

**9. Q... What should I do if a payee refuses or neglects to provide a TIN?**

**A...** Begin backup withholding immediately on any reportable payments. Do the required annual solicitation (request) for the TIN. Question 19 has information about the solicitation requirements for missing and incorrect TINs. Backup withhold until you receive a TIN.

**10. Q... How do I know if a TIN on my account is incorrect?**

**A...** After the submission of Form 1099 information returns, the IRS will send you a CP2100 or a CP2100A Notice and a listing of incorrect Name/TIN(s) reported on those forms.

**11. Q... What is a CP2100 or CP2100A Notice?**

**A...** It is a notice that tells a payer that he or she may be responsible for backup withholding. It is accompanied by a listing of missing, incorrect, and/or not currently issued payee TINs. Large volume filers will receive a CD or DVD data file CP2100, mid-size filers receive a paper CP2100, and small filers receive a paper CP2100A.

**Large Filer ..... 250 or more error documents;**

**Mid Size Filer ..... Between 50 and 249 documents.**

**Small Filer ..... Less than 50 error documents.**

**12. Q... What should I do if I receive a CP2100 or CP2100A Notice?**

**A...** Compare the listing(s) with your records. For missing TINs: If you have not started backup withholding, begin to do so immediately and continue until you receive a TIN. You must make up to three solicitations for the TIN (initial, first annual, second annual), as described in Question 19, to avoid a penalty for failing to include a TIN on the information return.

**For incorrect TINs:** Compare the accounts on the listing with your business records. See Question 19 for the solicitation requirements in order to avoid a penalty for failure to include the correct TIN on an Information Return. If they agree, send the appropriate "B" Notice to the payee. If an account does not agree, this could be the result of a recent update to SSA records, an error in the information you submitted, or an IRS processing error. If this type of error occurred, the only thing you should do is correct or update your records, if necessary.

**Remember: You do not have to call or write to the IRS to say that you made the correction or update to your records.**

**13. Q... What is a "B" Notice?**

**A...** A "B" Notice is a backup withholding notice. There are two "B" Notices -- the First "B" Notice and the Second "B" Notice. You must send the First "B" Notice and a Form W-9 to a payee after you receive the first CP2100 or CP2100A Notice with respect to this account for soliciting a correct Name/TIN combination. You must send the second "B" Notice to a payee after you receive a second CP2100 or CP2100A Notice within a 3 calendar year period. The text of the Second "B" Notice is different from that of the First "B" Notice. The Second "B" Notice tells the payee to contact IRS or SSA to obtain the correct Name/TIN combination. The mailing of the second notice should not include a Form W-9. The payee must certify the Name/TIN combination after receiving the second "B" Notice. Generally, you do not have to send a "B" Notice more than two times within three calendar years to the same account.

**14. Q... When do I send a "B" Notice to a payee?**

**A...** You have 15 business days from the date of the CP2100A or CP2100 Notice, or the date you received it (whichever is later), to send a "B" Notice to a payee. For incorrect TINS you only have to send a "B" Notice to a payee whose Name/TIN combination and account number on your records agrees with the combination that IRS identified as incorrect.

**15. Q... How do I know which "B" Notice to send?**

**A...** If this is the first CP2100 or CP2100A Notice you have received with respect to this account, you must provide the payee with (1) the First "B" Notice and (2) a copy of Form W-9 (or acceptable substitute). You may also provide an optional reply envelope. Your outside mailing envelope must be clearly marked **"IMPORTANT TAX INFORMATION ENCLOSED" or "IMPORTANT TAX RETURN DOCUMENT ENCLOSED."**

If this is the second CP2100 or CP2100A Notice you have received within three calendar years with respect to this account, you must provide the payee with the Second "B" Notice. Do not include a Form W-9. You may also provide an optional reply envelope. Your outside mailing envelope must be clearly marked **"IMPORTANT TAX INFORMATION ENCLOSED" or "IMPORTANT TAX RETURN DOCUMENT ENCLOSED."**

**16. Q... Do I have to mail a Second "B" Notice if I receive the second CP2100 or CP2100A Notice in the same calendar year as the first notice?**

**A...** No. You may disregard the second CP2100 or CP2100A notice, even if it relates to a different tax year than the first notice. You also have no obligation to mail a second "B" Notice if you receive the second CP2100 or CP2100A Notice in a different calendar year than the first, but both of the CP notices relate to the same payee's account for the same calendar year.

**17. Q... What should I do if a “B” Notice is returned as “undeliverable”?**

**A...** You must begin backup withholding. However, try to get the correct address for the payee and re-mail the notice. If you cannot find the correct address, keep the undelivered notice with your records for a period of three years, in order to track the “two-in-three-year” rule (see Question 13) or, until you have obtained a valid address.

**18. Q... After I receive a CP2100 or CP2100A Notice, when do I start and stop backup withholding?**

**A...** You must backup withhold on all reportable payments to the payee 30 business days after you have received the CP2100 or CP2100A Notice. You must stop backup withholding on payments within 30 calendar days after you have received the required certification (Form W-9) from the payee or TIN validation from the SSA or the IRS, if it was a second notification. At your option, you may start and stop backup withholding at any time during these 30-day periods.

**19. Q... What are the first and second annual solicitation requirements?**

**A...** A solicitation is a request for a payee’s correct TIN. You must make the request to satisfy the backup withholding requirements and to avoid a penalty for filing another information return with a missing or an incorrect TIN. The payee must furnish a certified TIN (initial solicitation) on Form W-9 with respect to payments of interest, dividends, and amounts subject to broker reporting. For other payments, the payee may furnish/provide the TIN in any manner.

**For missing TINs:** For all payees you must make the initial solicitation when the payee opens the account or when the transaction occurs. If the payee does not provide a TIN when you initially ask for it, you must begin backup withholding. In addition, to avoid a penalty for filing an incorrect information return, you must make a first annual solicitation by December 31 of the year in which the account is opened (for accounts opened before December) or January 31 of the following year (for accounts opened during the preceding December). If the payee does not provide a TIN after the first annual solicitation, you must make the second annual solicitation by December 31 of the year following the calendar year in which the account was opened.

**For incorrect TINs:** You must make up to two annual solicitations in response to the CP2100 or CP2100A Notice. You must send a B Notice within 15 business days after you receive a CP2100 or CP2100A Notice. If you receive a Proposed Penalty Notice (972CG) but not a CP2100 or CP2100A Notice, your annual solicitation must be made by December 31st of the year you received the Proposed Penalty Notice (972CG).

However, if you already sent a B Notice in the calendar year in response to a CP2100 or CP2100A Notice, you do not have to send another solicitation in response to the proposed penalty notice. If the IRS notifies you in the next calendar year that a TIN is still incorrect, you must make a second annual solicitation within 15 business days after you receive the second CP2100 or CP2100A Notice.

**20. Q... Does a CP2100 or CP2100A Notice indicate whether it is the first or second notification of an incorrect TIN for a specific account?**

**A...** No. The backup withholding regulations require that payers be responsible for tracking the status of the notices they receive.

**21. Q... What is the relationship between the requirements to make an annual solicitation for a payee’s TIN and the requirements to send a “B” Notice?**

**A...** Sending a “B” Notice to a payee in response to a CP2100A or CP2100 Notice satisfies the annual solicitation requirement in order to avoid a penalty for filing an information return with an incorrect TIN.

- 22. Q... Why are accounts I corrected still on the listing of missing or incorrect TIN(s)?**  
**A...** Due to processing cut-off points, a listing may or may not reflect your latest corrections. If you know that an account was corrected, do not send a “B” Notice to the payee.
- 23. Q... What should I do if a TIN was actually on file but was omitted from the Form 1099 or reported incorrectly?**  
**A...** Make any required change to your records and use the correct information on future filings. Do not send a “B” Notice to the payee.
- 24. Q... What should I do if this is the first notification and the Form W-9 is returned with the same incorrect information?**  
**A...** Keep the Form W-9 on file to show that the payee certified the Name/TIN combination. Do not backup withhold.
- 25. Q... If I don’t do business anymore with a payee, or if it was only a one-time transaction, what should I do with the “B” Notice?**  
**A...** Send it and try to get the correct TIN. Also, note your records to track the notice for the “two-in-three year” rule. You will need this information if you should renew business with the payee. We require that you track these accounts for three years after the date of the first CP2100A or CP2100 Notice.
- Note: A “B” Notice is not required if no payments have been made to an account and no return is required for the account for one year.**
- 26. Q... Can a sole proprietor have an SSN or does he or she need an EIN?**  
**A...** A sole proprietor may have an SSN or an EIN. However, he or she must always furnish his or her individual name (on Name Line 1), regardless of whether he or she uses a SSN or an EIN. A sole proprietor may also provide a business name or Doing Business As (DBA) (on Name Line 2), but he or she must list his or her individual name first on the account with you.
- 27. Q... Should I backup withhold on a payee who is a nonresident alien?**  
**A...** Yes. A nonresident alien is subject to backup withholding unless you have a signed Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, on file for him or her.
- 28. Q... Can a Form W-9 for one account be used to correct all accounts?**  
**A...** Yes, if the payer required a payee to file only one Form W-9 for all accounts or instruments of the payee.
- 29. Q... Can a payee be subject to backup withholding for more than one reason?**  
**A...** Yes. However, backup withhold for only one reason at a time.
- 30. Q... How do I get an EIN?**  
**A...** Complete Form SS-4, Application for Employer Identification Number. Follow “How to Apply” in the instructions for Form SS-4 to obtain an EIN by mail, telephone, or facsimile (fax).
- 31. Q... What form do I use to report backup withholding?**  
**A...** Report backup withholding on Form 945, Annual Return of Withheld Federal Income Tax. For more information, including the deposit requirements for Form 945, see the instructions for Form 945, or Pub. 15, (Circular E), Employer’s Tax Guide.



**32. Q... How is a Name/TIN mismatch identified?**

**A...** A Name/TIN combination is incorrect if it does not match, or cannot be found, on IRS or SSA files. For example, a Name/TIN mismatch occurs when an individual name is submitted with a TIN not associated with the individual name provided. A TIN is not interchangeable with different names. A business EIN must be used for a partnership, corporation, or non-disregarded Limited Liability Company (LLC). An SSN must be used with an individual name (In first name line). A Sole Proprietor must always provide his/her individual name. A Sole Proprietor may provide his/her Doing Business As (DBA) name (in second name line) in addition to the required individual name together with the matching SSN.

**33. Q... What amount is subject to backup withholding with respect to security sales made through margin accounts?**

**A...** The amount subject to backup withholding in the case of a security sale made through a margin account is limited to the amount of cash available for withdrawal by the customer immediately after the settlement of the sale. The amount available for withdrawal by the customer does not include amounts required to satisfy margin account maintenance. If a margin call forces a customer into a sell - off, such proceeds are not subject to backup withholding.

**34. Q... In what manner should a payer treat erroneously withheld tax?**

**A...** If a payer withholds from a payee in error or withholds more than the correct amount of tax, the payer may refund the amount improperly withheld. The refund must be made prior to the end of the calendar year and prior to the time the payer issues a Form 1099. If the payer has not deposited the amount of the tax prior to the time that the refund is made to the payee, the payer should not deposit the improperly withheld tax. If the improperly withheld tax has been deposited prior to the time the refund is made to the payee, the payer may adjust any subsequent deposit of tax collected, which the payer is required to make, by the amount of the tax which has been refunded to the payee. Payers may use refund alternatives only when backup withholding is the result of an error by the payer. The timely submission of requested TIN information including any verifications and/or certifications by the payee does not establish an error by the payer.

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## **WHERE TO CALL FOR HELP**

If you have any questions about backup withholding, information reporting, Forms 1099, or the CP2100 or CP2100A Notice(s) and listing(s), you may call:

**The Information Reporting Program Centralized Customer Service Site**

Telephone (866) 455-7438 (TOLL FREE) / (304) 263-8700 (not toll free)

Hours 8:30 am to 4:30 pm Monday through Friday, ET

E-Mail [mccirp@irs.gov](mailto:mccirp@irs.gov).

**Access this publication on-line at [www.irs.gov/pub/irs-pdf/p1281.pdf](http://www.irs.gov/pub/irs-pdf/p1281.pdf).**

## ACTIONS FOR MISSING TIN(S) AND INCORRECT NAME/TIN COMBINATIONS

The CP2100 or CP2100A Notice includes a listing(s) of the information returns you filed that had missing, incorrect, and/or not currently issued TIN(s). You should compare the listing(s) to your records to determine which of the following required actions you must take.

### Missing TIN(s)

We consider a TIN to be missing if it is not provided or if it is obviously incorrect. Examples are a TIN with more or less than nine digits, or with a mixture of digits and letters. For accounts with missing TIN(s), make sure backup withholding has begun and continue backup withholding until you receive a TIN. If you have not begun backup withholding, generally you must:

1. Begin backup withholding on any reportable payment you make and continue backup withholding until you receive a TIN. Remember that in some cases, the TIN must be certified.
2. Do not send a first or second "B" Notice in response to the CP2100 or CP2100A Notice. However, in order to avoid a penalty for filing an information return that omitted the payee's TIN, you must make a first annual solicitation for the TIN (generally by December 31 of the year in which the account is opened) and if a TIN is still not received make a second annual solicitation by December 31 of the following year. No annual solicitations are required in the years in which no reported payments are made.
3. Report amounts withheld on Form 945, Annual Return of Withheld Federal Income Tax, and make the required deposits.

**Note: Generally, you must obtain a TIN from a payee even for a "one-time" transaction. If you do not, the law allows us to charge a penalty. Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TIN(s), has information on removing or reducing penalties due to reasonable cause.**

**Note: If you inadvertently did not include the TIN on the information return, do not contact the payee. Include the TIN on any future information returns filed.**

### Incorrect Name/TIN Combinations (including not currently issued TINs)

A Name/TIN combination is incorrect if it does not match or cannot be found on IRS or SSA files. You must follow different procedures depending on whether information on the listing(s) **agrees** or **disagrees** with your business records. Compare the listing(s) with your records and take the following actions:

For account information that **does not agree**, check to see if you put the incorrect information on the return, if the information changed after you filed the return, or if the IRS misprinted the information when processing the return. **In these situations, do not write to the IRS. However:**

1. If you reported the incorrect information on the return, correct your records and include that information on any future information returns you file. **Do not send a "B" Notice to the payee. Do not send the correction to the IRS.**
2. If the information changed after you filed the return, include that information on any future information returns you file. Do not send a "B" Notice to the payee. **Do not send the correction to the IRS.**
3. If the IRS misprinted your information, make a note of it in your records and do not take any action. **Do not send the correction to the IRS.**

For account information that **agrees** with your records, determine whether this is the first or second time, within three calendar years, that we have notified you about an incorrect Name/TIN combination. Your first notification of an incorrect Name/TIN combination occurs when the payee TIN appears for the first time on the listing we send you. The second notification of an incorrect Name/TIN combination is when the same payee TIN appears for the second time within three calendar years on the listing.

**Note:** The 60-day exemption from backup withholding on presentation of an awaiting - TIN certificate applies only to interest and dividend payments, and certain payments made with respect to readily tradable instruments. Any other reportable payment, such as non-employee compensation, is subject to backup withholding immediately, even if the payee has applied for and is awaiting a TIN. Upon presentation of an awaiting TIN certificate, the payee must certify under penalties of perjury that he/she is not currently subject to backup withholding.