



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-01

January 9, 1984

TO: All NASD Members and Level 2 and Level 3 Subscribers
RE: National Market System to Expand to 728 Issues January 17;
and Year-End NASDAQ Market Highlights

NASDAQ 1983 SHARE VOLUME REACHES 15.9 BILLION MARK; 88.7% INCREASE OVER RECORD 1982 8.4 BILLION

1983 NASDAQ volume reached 15.9 billion shares, an all-time record and an 88.7% increase over 1982 volume. The 15.9 billion shares represented 74% of the NYSE's 1983 volume and 750% of that of the AMEX.

On the last trading day of 1983, NASDAQ volume exceeded that of the NYSE floor by nearly seven million shares. This was the seventh time in 1983 that NASDAQ daily volume was higher than that of the NYSE. Average daily volume for 1983 was 62.9 million as compared to 33.3 million in 1982. A record for daily volume was set on June 16 when 95.2 million shares were traded.

The NASDAQ Composite Index closed at 278.60, gaining 19.9% during 1983 and outperforming the NYSE Composite and the Standard and Poor's 500 indices. The six NASDAQ subindices performed as follows:

	Closing Value	Percent Change Over 1982 Closing
Industrial	323.68	+18.3
Other Finance	277.53	+33.7
Bank	203.75	+30.3
Insurance	257.63	+13.8
Utility	269.39	- 5.9
Transportation	280.80	+43.6

The total number of securities on NASDAQ at year-end was 4,467, up 803 from 1982 and the number of companies reached 3,901, an increase of 637 from the year before.

In December, NASDAQ share volume hit 1,327,253,000 shares for a daily average of 63,202,524 shares during 21 trading days. For the month, NASDAQ volume was 71.8% of the NYSE's 1,848,836,000 shares and 910.2% of the AMEX's 145,720,000 shares.

NATIONAL MARKET SYSTEM TO EXPAND TO 728 ISSUES ON JANUARY 17

An additional 50 issues will voluntarily join the NASDAQ National Market System on Tuesday, January 17, bringing the total number of NMS securities to 728. These 50 issues meet the SEC's criteria for voluntary designation, which include average monthly trading volume of 100,000 shares and a minimum bid price of \$5.

The 50 issues scheduled to join NMS on Tuesday, January 17, are:

SYMBOL	SECURITY	LOCATION
ABEV	Allegheny Beverage Corporation	Baltimore, MD
ACIX	American Carriers, Inc.	Overland Park, KS
ASAI	Atlantic Southeast Airlines, Inc.	College Parkway, GA
AZTC	Aztec Manufacturing Co.	Crowley, TX
BELL	Bell National Corporation	San Mateo, CA
BHSL	Beverly Hills Savings and Loan Association	Beverly Hills, CA
BGPH	Bishop Graphics, Inc.	Westlake Village, CA
BRSL	Bristol Corporation	Elkhart, IN
BSCO	Burnham Service Corporation	Columbus, GA
CPIC	CPI Corp.	St. Louis, MO
CRBRA	Cerberonics, Inc. (Cl. A)	Bailey's Crossroads, VA
CHMX	Chemex Pharmaceuticals, Inc.	Denver, CO
COMR	Comair, Inc.	Cincinnati, OH
CHRZ	Computer Horizons Corporation	New York, NY
CSRE	Comshare, Incorporated	Ann Arbor, MI
CPER	Consolidated Papers, Inc.	Wisconsin Rapids, WI
CRMP	Crump (E. H.) Companies, Inc.	Memphis, TN
DBAS	DBA Systems, Inc.	Melbourne, FL
DSCP	Datascope Corporation	Paramus, NJ
DATA	Endata, Inc.	Nashville, TN
FFSH	Farm Fresh, Inc.	Norfolk, VA
FSAW	First Savings Association of Wisconsin	Milwaukee, WI

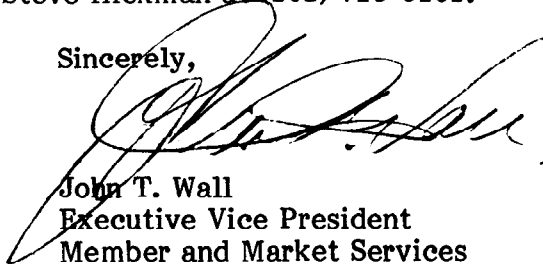
GAEO GMIC	Galileo Electro-Optics Corporation General Microwave Corporation	Sturbridge, MA Farmingdale, NY
HCRX HELE HURC	Health Care and Retirement Corporation of America Helen of Troy Corporation Hurco Manufacturing Company, Inc.	Lima, OH El Paso, TX Indianapolis, IN
JSON	Josephson International Inc.	New York, NY
MSSL	Mid-State Federal Savings and Loan Association	Ocala, FL
NCTY NBTY NWRK	National City Corporation Natures Bounty, Inc. Networks Electronic Corp.	Cleveland, OH Bohemia, NY Chatsworth, CA
OCIL	Ocilla Industries, Inc.	New York, NY
PHON PIOS PWRC PWTC	Phone-Mate, Inc. Pioneer-Standard Electronics, Inc. Power Conversion, Inc. Powertec Inc.	Torrance, CA Garfield Heights, OH Elmwood Park, NJ Chatsworth, CA
QMSI QMED QMEDW	Quality Micro Systems, Inc. Quest Medical, Inc. Quest Medical, Inc. (wts)	Mobile, AL Carrollton, TX Carrollton, TX
REIN RTCH RHAB REXN	Raymond Engineering, Inc. Radiation Technology, Inc. Rehab Hospital Services Corporation Rexon Incorporated	Middletown, CT Rockaway, NJ Mechanicsburg, PA Culver City, CA
SCNN SSSV SPAN	Scan-Tron Corporation Scientific Systems Services, Inc. Span-America Medical Systems, Inc.	Long Beach, CA Melbourne, FL Greenville, SC
VALU	Value Line, Inc.	New York, NY

WCAT WICAT Systems, Inc.
WINNS Winn Enterprises

Orem, UT
Fullerton, CA

Any questions regarding this notice should be directed to Donald Boscic, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Steve Hickman at (202) 728-8202.

Sincerely,



John T. Wall
Executive Vice President
Member and Market Services

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-2

January 13, 1984

TO: All NASD Members and Level 2 and Level 3 Subscribers

RE: 12 Securities Mandated Into NMS on February 7

An additional 12 securities will join the 728 already designated to trade in the NASDAQ National Market System on Tuesday, February 7, 1984. These securities have met the mandatory NMS designation requirements which include an average trading volume of 600,000 shares a month and a minimum bid price of \$10 on the last five business days of 1983.

As required by SEC Rule 11Aa2-1 all issues meeting the mandatory designation at the end of each quarter automatically are added to the National Market System within 45 days of the quarter ending date.

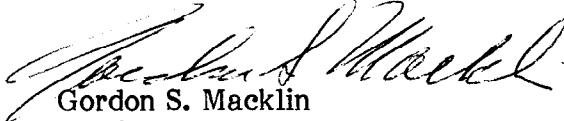
The 12 securities joining NMS on February 7 are:

SYMBOL	COMPANY	LOCATION
CMPQ	COMPAQ Computer Corporation	Houston, TX
ELSTF	Elscint, Limited	Haifa, Israel
FDRI	First Data Resources, Inc.	Omaha, NE
FFAZ	First Federal Savings and Loan Association of Arizona	Phoenix, AZ
FOXM	FoxMeyer Corporation	Aurora, CO
GRTA	Great American Federal Savings Bank	San Diego, CA
HWRD	Howard Savings Bank (The)	Newark, NJ
LOTS	Lotus Development Corporation	Cambridge, MA

PHSI	Pearle Health Services, Inc.	Dallas, TX
STRA	Stratus Computer, Inc.	Natick, MA
VLIS	VLI Corporation	Irvine, CA
WIDE	Widcom, Inc.	Campbell, CA

Any questions regarding this notice should be directed to Donald Bosc, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Steve Hickman at (202) 728-8202.

Sincerely,



Gordon S. Macklin
President

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-3

January 24, 1984

TO: All NASD Members and Other Interested Persons

RE: Temporary Relief from Certain Provisions of Rules 15c3-1 and 15c3-3
Dealing with Registered Municipal Securities Is Extended Until
March 31, 1984, By SEC Staff

On December 30, 1983, the staff of the SEC's Division of Market Regulation agreed to an extension of the temporary relief it previously granted under Rule 15c3-1 (the "net capital" rule) and Rule 15c3-3 (the "customer protection" rule). This temporary relief, which was scheduled to expire on December 31, 1983, provides an extension of certain time periods specified in the rules before which capital deductions and/or other actions are required for transactions involving registered municipal securities. The determination to request an additional extension was based in part on the fact that since the requirement to issue bonds in registered form has only been in effect since July 1983, its full impact has not yet been realized. In requesting the extension, the Association agreed to continue to monitor the use of the temporary extensions and the impact of aged fails in the municipal marketplace. In light of this, the relief provided by the July no-action letter was extended by the Commission staff through March 31, 1984.

A brief discussion of the background concerning the Association's request, and the sections of the rules affected as a result thereof, follows. Also, a copy of the letter issued by the Division of Market Regulation is reprinted as part of this Notice. For additional information, members should refer to Notice to Members 83-41, dated July 25, 1983.

BACKGROUND

In July 1983, the Association's Capital and Margin Committee, and others, expressed concern that the issuance of municipal securities in registered form, as required by the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), would have a deleterious effect on the clearance and settlement of municipal securities transactions. As a result, the Association sought temporary relief for its members from certain increased capital and reserve requirements

which would result from an increase in the number of fails related to registered municipal securities. This temporary interpretative relief was granted by the Commission staff effective through December 31, 1983.

The SEC staff, as a condition for granting relief in this area, required the designated examining authority to secure data from each broker-dealer who took advantage of the temporary extension. In this regard, the Association requested members to submit data with its regular FOCUS Part I Report for each month in which the member relied on any of the extensions provided for in the no-action letter. The data collected thus far indicates that the number of fail items and corresponding contract values have increased significantly since July. This seems to reflect an increase in the amount of fails in the marketplace although no firm conclusions can be drawn due to the limited number of municipal broker-dealers submitting reports.

While these figures do not reflect widespread use of the interpretative relief afforded by the Commission, the general consensus is that the full impact of the requirement to issue municipal bonds in registered form has not been realized and probably will not be realized until there are a significant number of registered bonds trading in the marketplace. Since the requirement for registration has only been in effect since July 1983, the impact of the new rule has been limited. However, as more and more registered issues are brought to the market, more pressure will be exerted on the municipal securities industry back-offices. It is anticipated that this will be even more apparent as the problems associated with record ownership transfer increase and collection of interest through a simple redemption of bearer coupons is replaced by the complexities of crediting interest to a beneficial holder of record.

While the Association recognizes that the Municipal Securities Rulemaking Board (MSRB) has initiated steps to promote the efficient clearance and settlement of municipal securities transactions, it is anticipated that municipal securities broker-dealers, clearing agencies and depositories will need time to respond to these initiatives. In this regard, the MSRB has enacted recent rule changes relating to the comparison of interdealer trades, the acknowledgement and confirmation of customer trades through the facilities of a clearing agency, and mandatory book entry settlement for depository eligible securities. As a result, the number of physical deliveries of municipals and resultant fails will be reduced. However, in order to ease the transition to automated clearance, the MSRB has delayed the effective dates of these rule changes until August 1, 1984 (mandatory use of clearing agencies), and February 1, 1985 (mandatory book entry settlement).

In light of the above findings and discussions, the Association petitioned the Commission to extend the relief applicable to registered municipal securities provided by its no-action letter issued in July.

PERTINENT PROVISIONS OF THE NET CAPITAL AND CUSTOMER PROTECTION RULES

SEC Rule 15c3-1

The relief provided under the net capital rule for transactions in registered municipal securities is as follows:

- Subparagraph (c)(2)(ix) provides for a deduction from net capital for those municipal fails to deliver which are outstanding for 21 business days or longer. This time period has been extended to 30 business days for transactions involving registered municipal securities.
- Under subparagraph (c)(2)(iv)(B), an existing interpretation provides that broker-dealers must make appropriate deductions from net worth for deficits in cash accounts for C.O.D. transactions involving municipal securities 42 calendar days after trade date. This time period has been extended to 60 calendar days after trade date for transactions involving registered municipal securities.
- Subparagraph (a)(8) permits a municipal securities broker's broker to compute its capital requirements in accordance with specified guidelines. In this regard, subparagraph (a)(8)(iv) requires such a broker to make a deduction from net worth equal to 1% of the market value of the underlying security for municipal securities fails to deliver which are outstanding for 21 business days or longer. This time period has been extended to 30 business days for fails to deliver involving registered municipal securities.

SEC Rule 15c3-3

The relief provided under Rule 15c3-3 for registered municipal securities fails to deliver is as follows:

- In computing its reserve requirement, a broker-dealer is required to exclude from the debit side of the formula fails to deliver which are outstanding more than 30 calendar days. This time period has been extended to 45 calendar days for fails to deliver involving registered municipal securities.

REPORTING REQUIREMENT

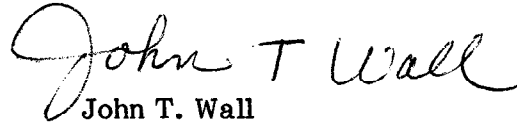
During the extended period, the Association will continue to monitor the use of the interpretative relief and the impact of aged fails in the municipal marketplace and to report such findings to the Commission on a periodic basis.

In this regard, an Association member for whom the NASD is the designated examining authority is requested to continue to submit the form, entitled "Supplemental Report - Relief from Operational Deductions for Aged Fails to Deliver in Registered Municipal Securities," to the Association along with its FOCUS Part I Report for each month in which the member relies on any of the extensions for aged fails permitted by the SEC's temporary no-action letter. This form (copy enclosed) must be submitted even if the member uses the interpretation in only one instance.

Members are reminded that the relief provided by the no-action letter is available only for fails involving registered municipal securities and is effective only through March 31, 1984.

Questions concerning this Notice may be directed to James M. Cangiano, Associate Director, Department of Policy Research, at (202) 728-8273. Questions regarding the filing and the completion of the Supplemental Report form should be referred to your local NASD District Office.

Sincerely,

A handwritten signature in black ink that reads "John T. Wall". The signature is written in a cursive style with a large, looping initial "J".

John T. Wall
Vice President
Member and Market Services

Attachments



SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

December 30, 1983

Mr. John T. Wall
Executive Vice President
Member and Market Services
National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Wall:

Our letter dated July 7, 1983, to Gordon S. Macklin, President of the National Association of Securities Dealers, Inc. ("NASD"), took a no action position with respect to a temporary extension of certain time periods specified in the net capital and customer protection rules before capital deductions and/or other actions were required to be taken for transactions involving registered municipal securities. The temporary relief was scheduled to expire on December 31, 1983.

The Division, as a condition for taking its position in this area, required the appropriate designated examining authority to secure data from each broker-dealer which took advantage of the temporary extension. In this regard, the NASD requested a member to submit data with its regular FOCUS Part I reports for each month in which the member relied on any of the extensions provided.

You claim that while the available figures do not reflect widespread use of the temporary relief the general consensus among industry representatives is that the full impact of municipal bond registration has not been realized and probably will not be realized until there are a significant number of registered bonds trading in the marketplace. However, you believe as more registered issues are brought to the market, the problems associated with record ownership transfer will increase as will the collection of interest.

You state that the NASD believes that the municipal securities industry led by the Municipal Securities Rulemaking Board ("MSRB")

Mr. John T. Wall
Page Two

has initiated steps toward promoting efficient clearance and settlement of municipal securities transactions. You believe that recent rule changes of the MSRB relating to the comparison of interdealer trades, the acknowledgement and confirmation of customer trades through the facilities of a clearing agency, and mandatory book entry settlement for depository eligible securities will help facilitate the more efficient and timely settlement of municipal securities. As a result, the number of physical deliveries of municipal securities and resultant fails will be reduced.

In order to ease the transition to automated clearance however, the MSRB has delayed the effective dates of these rule changes until August 1, 1984 (mandatory use of clearing agencies), and February 1, 1985 (mandatory book entry settlement). Given these circumstances, the NASD requests that the Commission extend to at least July 1, 1984, the relief provided by the July no-action letter.

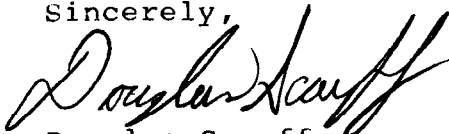
Should the Commission act favorably on this request, you state that the NASD will continue, during the extended period, to monitor the use of the temporary extensions and the impact of aged fails in the municipal marketplace and to report such findings to the Commission on a periodic basis.

Finally, you state that the NASD believes that the data already gathered demonstrates that the interpretation has not been abused or used as an excuse in delaying the completion of securities transactions, and that the industry is as desirous as the Commission of eliminating inefficiencies and delays in the clearance and settlement of municipal transactions and is working diligently to achieve that goal.

We agree that an extension of the temporary relief heretofore granted is appropriate because of the continued uncertainties in the registered municipal bond market and to ensure an orderly transition in the broker-dealers' adapting to registered bonds. However, in view of the small number of fails which have exceeded the aging period, we believe that a 6 month period is not warranted. We believe that the period should be extended only to March 31, 1984, unless more substantial and convincing evidence of its need to the industry is submitted in support of any further request for an additional extension.

We appreciate your efforts in bringing this matter to our attention and your cooperation in our attempts to understand the issue fully.

Sincerely,



Douglas Scarff
Director

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-4

January 23, 1983

TO: All NASD Members and Level 2 and Level 3 Subscribers

RE: National Market System Grows to 789 Securities With 50 Additions on February 14

On Tuesday, February 14, the National Market System will include 789 securities as 50 more NASDAQ securities are phased into the System. (A week earlier, 12 mandatory designations will join NMS).

These 50 securities meet the SEC's voluntary designation criteria, which include six-month average trading volume of 100,000 shares a month and a minimum bid price of \$5.

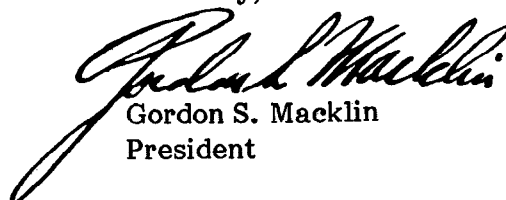
The 50 securities scheduled for NMS trading on February 14 are:

SYMBOL	COMPANY	LOCATION
ARON	Aaron Rents, Inc.	Atlanta, GA
AWAL	America West Airlines, Inc.	Tempe, AZ
ANDY	Andros Analyzers Incorporated	Berkeley, CA
AVTR	Avatar Holdings Inc.	Coral Gables, FL
BNHI	Bancorp Hawaii, Inc.	Honolulu, HI
BAMI	Basic American Medical, Inc.	Indianapolis, IN
BMPI	Biosearch Medical Products Inc.	Somerville, NJ
CSPI	CSP Inc.	Billerica, MA
CLNY	Calny Incorporated	San Mateo, CA
CTBC	Centerre Bancorporation	St. Louis, MO
CNTO	Centocor, Inc.	Malvern, PA
CRNR	Chronar Corporation	Trenton, NJ
CTAS	Cintas Corporation	Cincinnati, OH
CLRK	Clark (J. L.) Manufacturing Co.	Rockford, IL
CAUT	Computer Automation, Inc.	Boulder, CO
CPRD	Computer Products, Inc.	Ft. Lauderdale, FL
CORC	Corcom, Inc.	Libertyville, IL
CRWN	Crown Books Corporation	Landover, MD
DRUGA	Dart Drug Corporation (Cl. A)	Landover, MD
DUNK	Dunkin' Donuts Incorporated	Randolph, MA

SYMBOL	COMPANY	LOCATION
FICR	Fidelcor, Inc.	Rosemont, PA
FJNC	First Jersey National Corporation	Jersey City, NJ
GTSC	GTS Corporation	Houston, TX
GENL	Genetic Laboratories, Inc.	St. Paul, MN
GOTT	Gott Corporation	Winfield, KS
IPLSA	IPL Systems, Inc. (Cl. A)	Waltham, MA
IRIC	Information Resources, Inc.	Chicago, IL
IGAM	International Game Technology	Reno, NV
LAZB	La-Z-Boy Chair Company	Monroe, MI
LANC	Lancaster Colony Corporation	Columbus, OH
MPSG	MPSI Systems Inc.	Tulsa, OK
MSCI	MacNeal-Schwendler Corporation (The)	Los Angeles, CA
MTRC	Mercantile Bancorporation Inc.	St. Louis, MO
MIDW	Midwestern Companies, Inc. (The)	Joplin, MO
MOKE	Morgan, Keegan & Company, Inc.	Memphis, TN
NOXLB	Noxell Corporation (Cl. B)	Baltimore, MD
PLEY	Pauley Petroleum Inc.	Los Angeles, CA
PICC	Piccadilly Cafeterias, Inc.	Baton Rouge, LA
SSFT	Scientific Software Corporation	Denver, CO
SMLS	SciMed Life Systems, Inc.	Minneapolis, MN
SEME	Semicon, Inc.	Burlington, MA
SHEL	Sheldahl, Inc.	Northfield, MN
SKIP	Skipper's, Inc.	Bellevue, WA
SOCI	Society Corporation	Cleveland, OH
SOFT	SofTech, Inc.	Waltham, MA
STRW	Strawbridge & Clothier	Philadelphia, PA
SYST	Systematics, Inc.	Little Rock, AR
TLCI	Tender Loving Care Health Care Services, Inc.	Lake Success, NY
UPCO	United Presidential Corporation	Kokomo, IN
VAND	Van Dusen Air, Inc.	Minneapolis, MN

Any questions regarding this notice should be directed to Donald Bosc, Assistant Director, NASDAQ Operations, at (202) 728-8043. Questions pertaining to trade reporting rules should be directed to Steve Hickman at (202) 728-8202.

Sincerely,


Gordon S. Macklin
President

NASD

National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-5

January 25, 1984

TO: All NASD Members

RE: Jay W. Kaufmann & Co.
111 Broadway
New York, New York

ATTN: Operations Officer, Cashier, Fail-Control Department

On January 23, 1984, the United States District Court for the Southern District of New York appointed a SIPC Trustee for the above captioned firm.

Members may use the "immediate close-out" procedures as provided in Section 59(i) of the NASD's Uniform Practice Code to close out open OTC contracts. Also, MSRB Rule G-12 (h)(iv) provides that members may use the above procedures to close out transactions in municipal securities.

Questions regarding the firm should be directed to:

SIPC Trustee

Irving H. Picard, Esquire
Moses & Singer
Time & Life Building
1271 Avenue of the Americas
New York, New York 10020
Telephone: (212) 246-3700

* * * *



National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000

notice to members 84-6

January 25, 1984

I M P O R T A N T

Officers * Partners * Proprietors

TO: All NASD Members and Other Interested Persons

RE: Temporary Regulations Under the Interest and Dividend Tax Compliance Act of 1983; Backup Withholding

During the past year, the Association has taken an active role in attempting to assist members in their obligation to comply with the complex requirements imposed by both the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and the Interest and Dividend Tax Compliance Act of 1983 (the "Act").

Among other things, the Association published three separate Notice to Members dealing with the new legislation. The latest notice, dated November 1983 (Notice to Members 83-65), contained temporary regulations under the Interest and Dividend Tax Compliance Act of 1983 along with explanations of the key provisions of the Act with respect to due diligence and certification procedures for Taxpayer Identification Numbers ("TIN") and new requirements with respect to backup withholding.

Shortly after the Association's notice, the IRS published additional temporary regulations under the Act which provided further guidelines concerning the application of these requirements to broker-dealers and other payors. These additional regulations were contained in the November 25 and December 20, 1983, and the January 3, 1984, editions of the Federal Register. What follows are the key provisions of these temporary regulations presented in a question and answer format.

These questions reflect those areas having the most significant impact on members and represent, for the most part, the most frequently asked questions concerning backup withholding.

26 CFR Part 35 a. 9999-2, November 25, 1983

QUESTION

APPLICABLE PROVISIONS

- Is backup withholding applicable to gross proceeds which are subject to information reporting by broker-dealers?

- Is backup withholding applicable to original issue discount?

- What is the time period required to process a TIN after receipt by a customer?

- Are there exceptions to backup withholding during the period when a customer has applied for and is awaiting receipt of a TIN?

A-12 - Yes: Member must withhold on gross proceeds, as defined in the information reporting regulations if:

- (1) TIN is missing
- (2) TIN is incorrect
- (3)* TIN is not certified under penalty of perjury ("Post 1983" accounts only)

A-15 - Yes: OID is treated as a reportable payment of interest and as such is subject to backup withholding.

A-17 - Regulations require processing in 30 days. However, members may treat a TIN as having been received at any time within 30 days after it is provided.

A-18 - Yes: There is a 60-day grace period if the member is provided with an "Awaiting TIN Certification" as provided in the regulations. Form W-9 may be used for this purpose. The customer must also certify under penalty of perjury that he is not subject to backup withholding due to notified payee under-reporting.

A special rule for "pre-1984" accounts requires no action until January 16, 1984. After that date, withholding must occur unless: (1) the broker receives a TIN from the customer or (2) the customer provides an "Awaiting TIN Certification." If a W-9 is used, members should write "applied for" in the space reserved for the TIN. This form would be valid for the 60-day exception.

* Backup withholding need not be imposed until March 31, 1984 (See discussion of January 3, 1984, ruling which follows).

Also, for "post-1983" accounts, members who acquire securities for customers and do not hold the security in street name need only advise the payor of the fact that the customer has failed to provide a certified TIN (as required by Section A-39 of regulations published October 4, 1983; see Notice to Members 83-65), regardless of whether an "Awaiting TIN Certification" is received.

- Are "Exempt Recipients" also exempt from backup withholding?
- Is the IRS developing an exemption form for foreign persons?

A-21 - Yes: Exempt recipients as defined in the original withholding regulations are exempt from backup withholding. Form W-9 includes a listing of such exempt payees.

A-22 - Yes: Form W-8 relating to exemptions for foreign persons will be issued by IRS. However, payors may use substitute forms if W-8 is not available.

26 CFR Part 35 a. 9999-3 - December 20, 1983

QUESTION

APPLICABLE PROVISIONS

- What are the consequences should a member fail to withhold on reportable payments when required?
- Does backup withholding apply to tax-exempt interest?
- Does backup withholding apply to redemption of mutual fund shares?
- What are the provisions for backup withholding on short sales?

A-2 - A member is subject to the same requirements and penalties as an employer making a payment of wages, i.e., he is liable for the tax whether or not he has withheld. Additionally, he is subject to certain civil or criminal penalties.

A-21 - Tax-exempt interest is generally exempt from backup withholding. However, gross proceeds of a sale or redemption of a tax exempt bond is a reportable transaction and such proceeds would be subject to backup withholding.

A-22 - Yes: The "gross proceeds" of fund shares redeemed are reportable under the information reporting regulations and thus would be subject to backup withholding.

A-25 - A member has the option of withholding on gross proceeds at the time of sale or on the gain (if any) when such short sale is closed if such gain can be determined from the member's records.

- Are there special rules for sales of securities for a customer made over the telephone where a member does not have a certified TIN for such customer?

A-28A - Yes: A member may execute a sale transaction without first having the required certification provided: (1) the customer furnishes a TIN before the sale, and (2) the customer does not withdraw the proceeds of the sale prior to providing such certification (or prior to application of backup withholding). The customer, at the option of the member, may be allowed 30 days after the date of sale to furnish the required certification.

**Supplementary Regulations to
26 CFR Part 35 a. 9999 - 3 - January 3, 1984**

(Transitional rule with respect to withholding on gross proceeds by broker-dealers)

QUESTION

APPLICABLE PROVISION

- Has the requirement to obtain the required certification on "post 1983" accounts been waived, at the broker's option, until April 1, 1984?
- Are there any transitional rules for "pre 1984" accounts?

A-28B - Yes, therefore the account will not be subject to backup withholding provided a TIN is obtained by the member prior to the sale.

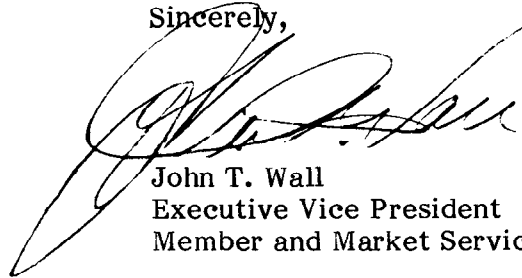
A-28B - Yes: For "pre 1984" accounts, backup withholding may be waived on the gross proceeds of a sale for customers who have not furnished a TIN provided: (1) the customer furnishes a TIN to the broker within 30 days after the date of the sale, and (2) the customer does not withdraw the proceeds of the sale prior to the time his TIN is furnished to the broker (or the application of backup withholding). Proceeds may be invested in other properties during such 30-day period provided that 20% of the proceeds are held in cash in the customer's account.

* * * *

Because of the complex nature of these regulations and the potential liabilities which could be incurred for non-compliance, members are urged to consult with their tax counsel or accountant as to their obligations under these rules. Once again, members are reminded that requests for tax rulings or specific interpretations of these regulations should be addressed directly to the IRS.

Please direct any questions concerning this notice to James M. Cangiano, Associate Director, Department of Policy Research, at (202) 728-8273.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Wall", is written over the typed name and title.

John T. Wall
Executive Vice President
Member and Market Services

Attachments

Federal Register

**Department of the
Treasury**

Internal Revenue Service

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 35a**

[T.D. 7922]

Employment Taxes; Backup Withholding and Due Diligence Relating to Taxpayer Identification Numbers and Certification Requirements**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document provides temporary regulations relating to backup withholding and due diligence relating to taxpayer identification numbers and certification requirements. Changes to the applicable tax law were made by the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 369). These regulations affect payors and payees of, and brokers with respect to, reportable payments and provide them with the guidance necessary to comply with the law.

DATE: The temporary regulations are effective for payments made after December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Diane Kroupa of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (202-566-3829).

SUPPLEMENTARY INFORMATION:**Background**

On October 4, 1983, the *Federal Register* published temporary employment tax regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR Part 35a) under sections 3406 and 6676 of the Internal Revenue Code of 1954 (48 FR 45362). Those amendments were published to conform the regulations to the statutory changes enacted by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369). Section 3406 was added to the Internal Revenue Code of 1954 by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 371), and section 6676 of the Code was amended by section 105 of the Act (Pub. L. 98-67, 97 Stat. 380).

This document contains temporary regulations relating to the requirement to impose backup withholding on reportable payments and the exercise of due diligence by payors of reportable interest, dividends, and patronage dividends and brokers. This document adds new § 35a.9999-2 to part 35a,

Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, to Title 26 of the Code of Federal Regulations. In addition, this document amends Q-42 (relating to window transactions) of the question and answers published in the *Federal Register* on October 4, 1983 (48 FR 45362). Because these provisions are generally effective for payments made after December 31, 1983, there is a need for immediate guidance so that payors and payees can prepare to comply with these provisions.

It is expected that further temporary regulations with a cross-reference to a notice of proposed rulemaking, containing additional rules relating to backup withholding, will be published within a month. The temporary regulations contained in this document will remain in effect until superseded by final regulations on this subject.

These temporary regulations, presented in question and answer format, are intended to provide guidelines upon which payors and payees of reportable payments (including reportable interest, dividend, and patronage dividend payments) may rely in order to resolve questions specifically set forth herein. However, no inference should be drawn regarding issues not raised herein or reasons certain questions, and not others, are included in these regulations.

Explanation of Provisions

These regulations provide additional guidance concerning the due diligence standard and provide general rules with respect to backup withholding. Most of the regulations address operational concerns of payors who must adapt their systems to begin withholding on payments made after December 31, 1983.

With respect to due diligence, the regulations provide additional guidance concerning the application of the due diligence exception, the payments to which due diligence is applicable, and the form and timing of the required mailing or mailings. The regulations also specify when due diligence applies to trustees, custodians, and fiduciaries.

The regulations provide guidance concerning the application of backup withholding to payments subject to reporting under section 6041 (relating to rents, royalties, commissions, etc.), section 6041A(a) (relating to nonemployee compensation), section 6045 (relating to brokers and barter exchanges), and section 6050A (relating to certain fishing boat operators).

With respect to reportable interest or dividend payments, the regulations explain how withholding will apply to original issue discount and address how payors may choose not to withhold on minimal payments of interest and dividends.

Section 3406(g)(3) requires that an exemption from withholding shall be provided for the period of time during which a payee is awaiting receipt of a taxpayer identification number. The regulations prescribe certain requirements that a payee must comply with in order to qualify for the exemption. The Service has determined that it generally takes a person approximately 4 weeks to receive a taxpayer identification number. Thus, the regulations provide that a payee generally has 60 days in which to furnish a taxpayer identification number to the payor. Backup withholding is not imposed on payments made during that period, if a payee certifies in the manner required that he or she is waiting for receipt of a taxpayer identification number.

The regulations also provide rules related to the application of backup withholding to trusts and estates. Finally, the regulations specify the record retention requirements for forms related to backup withholding.

With respect to the requirement to withhold under section 3406(a)(1) (B) or (C) when notified by the Service that a payee's taxpayer identification number is not correct or that the payee is subject to withholding due to a notified payee underreporting, payors will not be required to withhold on payments made to such payee until 30 days after temporary regulations are published in the *Federal Register* explaining how withholding will apply under section 3406(a)(1) (B) or (C).

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 533(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Diane Kroupa of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 35a

Employment taxes, Income taxes.
Backup withholding, Interest and
Dividend Tax Compliance Act of 1983.

Adoption of Amendments to the Regulations

Accordingly Part 35a is amended as follows:

PART 35A—[AMENDED]

Paragraph 1. Section 35a.9999-2 is added immediately after § 35a.9999-1 to read as follows:

§ 35a.9999-2 Questions and answers concerning due diligence and issues in connection with backup withholding.

The following questions and answers principally concern the backup withholding requirement with respect to reportable payments and the due diligence exception to the penalty on payors of reportable interest and dividend payments for failure to provide a payee's correct taxpayer identification number on certain information returns. These requirements are issued under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 369):

Due Diligence

Q-1. If a payor of reportable interest or dividends does not send the mailing or mailings described in A-5 and A-6 of § 35a.9999-1 of the Temporary Employment Tax Regulations, issued under the Interest and Dividend Tax Compliance Act of 1983, T.D. 7916 ("§ 35a.9999-1"), to all payees who have not certified under penalties of perjury that their taxpayer identification numbers are correct, will a payor be considered to have exercised due diligence with respect to a payee to whom the payor sends the required mailing or mailings?

A-1. Yes. Due diligence applies on a payee-by-payee basis. For example, if a payor sends the separate mailing described in A-5 of § 35a.9999-1 by December 31, 1983, only to certain payees, the payor will be considered to have exercised due diligence with respect to the payees to whom the mailing was sent. However, the payor will not be considered to have exercised due diligence with respect to those payees to whom the payor did not send the required mailing or mailings.

A penalty for failure to provide a correct taxpayer identification number will not be imposed merely because the payor fails to send the required mailing or mailings. Rather, a penalty will be imposed only in the case of an information return filed by a payor of reportable interest or dividends if the required mailing or mailings were not sent to the payee and the payor fails to

include a taxpayer identification number or includes an incorrect number on the return filed with respect to the payee.

Q-2. Does the due diligence standard apply to reportable payments other than reportable interest or dividends?

A-2. No. The due diligence standard does not apply to payments reportable under sections 6041, 6041A(a), 6045, or 6050A. Thus, payors of these other reportable payments are not required to send the mailings described in A-5 and A-6 of § 35a.9999-1.

Q-3. Do the rules of section 7503 of the Internal Revenue Code, regarding the time for performance of an act where the last day to perform the act falls on Saturday, Sunday, or a legal holiday, apply to the time limits for the mailings described in A-5, A-6, A-52, A-53, and A-55 of § 35a.9999-1?

A-3. Yes. For example, a mailing that must be sent on or before Saturday, December 31, 1983, will be considered timely if sent on or before Tuesday, January 3, 1984.

Q-4. Are trustees, custodians, or other fiduciaries subject to the due diligence standard?

A-4. The due diligence standard does not apply to a trustee, custodian, or other fiduciary, unless such person is a payor of reportable interest or dividends. A trustee, custodian, or other fiduciary is not a payor of reportable interest or dividends simply because the trustee, custodian, or fiduciary receives a payment of reportable interest or dividends. If a trust is considered a payor of reportable interest or dividends under A-20, below, however, the due diligence standard applies.

Q-5. Is a payor required to send the mailings described in A-5 and A-6 of § 35a.9999-1 by first-class mail, if it is the practice of the payor not to send correspondence to the payee by first-class mail, but rather to deliver personally, or to use intra-office mail to communicate with the payee?

A-5. No. A payor may send the mailing or mailings by first-class mail, by personal delivery, or by intra-office mail, provided that the mailing or mailings are delivered by the same method used by the payor in sending account activity and balance information and other correspondence to the payee.

Q-6. Must a payor affix postage to the return envelope to satisfy the requirement of including a postage-prepaid reply envelope in the mailings described in A-5 and A-6 of § 35a.9999-1?

A-6. The requirement that a payor must include a postage-prepaid reply envelope will be satisfied by the use of a "postage-prepaid envelope," a "business

reply mail envelope," or by affixing the required postage to a self-addressed reply envelope. (A "business reply mail envelope" involves an arrangement in which postage is charged only when a customer returns the reply envelope.)

Q-7. Must a payor who sends the mailings described in A-5 and A-6 of § 35a.9999-1 to a foreign address affix postage to the reply envelope?

A-7. No. A payor is required to include only a self-addressed reply envelope in a mailing to a foreign address. A payor is not required to affix postage to a reply envelope included in a mailing to a foreign address, regardless of whether the payee is a United States citizen, a United States resident, or a non-resident alien.

Q-8. Will a payor who sends the mailings described in A-5, A-6, A-52, A-53, and A-55 of § 35a.9999-1 violate the separate mailing requirement if the payor sends both a form W-9 (or substitute form) and a Form W-8 (or substitute form) in the same mailing?

A-8. No. The payor may include in any separate mailing both a solicitation of the payee's taxpayer identification number (Form W-9) and a solicitation of a certification of the payee's foreign status (Form W-8).

Q-9. Do "window transactions," as defined in Q-42 of § 35a.9999-1, include payments on Treasury bills and other instruments not in definitive form?

A-9. No. Because Treasury bills are not in definitive form, payments upon Treasury bills are not treated as window transactions. Similarly, payments upon other instruments not in definitive form are not treated as window transactions. The special rules for window transactions set forth in A-42 of § 35a.9999-1 thus apply only to redemptions of United States savings bonds, and to payments upon interest coupons, commercial paper, and banker's acceptances, if such instruments are in definitive form. The due diligence requirements set forth in A-5 and A-6 of § 35a.9999-1 are thus applicable to payors of payments on Treasury bills and other instruments not in definitive form, if those instruments are considered to have been acquired before 1984, and mature after December 31, 1983. In addition, the certification requirements set forth in A-32 of § 35a.9999-1 and all other relevant backup withholding requirements apply to payments on Treasury bills and other instruments not in definitive form.

Requirement of Backup Withholding

Q-10. Does backup withholding apply to reportable payments other than reportable interest and dividend payments?

A-10. Yes. Backup withholding also applies to payments that are subject to reporting under sections 6041(a) or (b).

6041A(a), and 6045, and to certain payments reportable under section 6050A ("other reportable payments"). Backup withholding applies to other reportable payments, other than payments reportable under section 6045, only if: (1) The payee fails to furnish a taxpayer identification number to the payor; or (2) the Internal Revenue Service notifies the payor that the taxpayer identification number furnished by the payee is not correct. Except in the case of payments reportable under section 6045, a payee of other reportable payments is not required to make any certifications under penalties of perjury, unless the payee seeks to claim the exemption from withholding while waiting for receipt of a taxpayer identification number (as explained in A-18, below). See A-12 and A-13, below, for rules regarding the application of backup withholding to transactions subject to reporting under section 6045.

Q-11. Under what circumstances is a payor of payments reportable under section 6041 or section 6041A(a) required to impose backup withholding?

A-11. A payor is required to withhold on reportable payments under sections 6041 and 6041A(a) only if: (1) A payee is subject to backup withholding under A-10, above, (*i.e.*, the payee fails to furnish a taxpayer identification number to the payor or the Internal Revenue Service notifies the payor that the taxpayer identification number furnished by the payee is not correct); and (2) any one of the following three conditions is satisfied: (a) Reportable payments to the payee aggregate \$600 or more during the calendar year; (b) the payor was required to file an information return under section 6041 or section 6041A(a), whichever is applicable, with respect to that payee for the preceding calendar year (*i.e.*, payments subject to reporting under section 6041 or section 6041A(a), whichever is applicable, aggregated \$600 or more to the payee for the preceding calendar year); or (c) the payor was required to impose backup withholding on payments made to the payee during the preceding calendar year (and the payments subject to backup withholding were of a type reportable under section 6041 or section 6041A(a), whichever is applicable).

If a payor pays amounts aggregating \$600 or more to a payee during a calendar year (condition (a) above), the amount subject to withholding is: (1) The amount of the payment that causes the aggregate payments to the payee during the calendar year to total \$600 or more (assuming that the payor made no payments during the preceding calendar

year that were subject to either reporting under section 6041 or section 6041A(a), whichever is applicable, or backup withholding); and (2) the amount of any additional payments of a type subject to reporting under section 6041 or section 6041A(a), whichever is applicable, made to the payee before the payee provides a taxpayer identification number to the payor or after the Internal Revenue Service notifies the payor that the taxpayer identification number furnished by the payee is not correct. For example, if a payor made payments of \$200 each on March 31, 1984, June 30, 1984, and September 30, 1984, to a payee, which were reportable under section 6041, the payments on March 31, and June 30 would not be subject to backup withholding, because the \$600 threshold would not have been reached as a result of making either of those payments (assuming that payments made to the payee during 1983 did not aggregate \$600 or more and were thus not subject to reporting). However, the payor would be required to withhold 20 percent of the \$200 payment made on September 30, if the payee did not furnish a taxpayer identification number to the payor, or the Internal Revenue Service notified the payor that the number provided by the payee is incorrect, prior to the payment date (September 30). If the payor made a \$50 payment of a type reportable under section 6041, on December 31, 1984, to the same payee, the payor would be required to withhold 20 percent of the \$50 payment, if the payee had not provided a taxpayer identification number, or the Internal Revenue Service notified the payor that the number provided by the payee is incorrect, prior to the date of payment (December 31).

If, in the preceding calendar year, a payor was required to file an information return with respect to payments to the payee under section 6041 or section 6041A(a) (condition (b) above), or a payor is required to impose backup withholding with respect to payments of a type that were reportable under such sections (condition (c) above), the payor is required to withhold 20 percent of any payment of a type reportable under section 6041 or section 6041A(a) made to the payee during the following year, regardless of the amount of the payment, if, prior to the date of the payment, the payee fails to provide a taxpayer identification number to the payor, or the Internal Revenue Service notifies the payor that the number provided by the payee was not correct. Assume, for example, that a payor made reportable payments under section 6041 to a payee that aggregated

\$600 or more during 1983, so that the payor was required to file an information return with respect to the payments for 1983. If the payor paid \$300 to the payee on January 31, 1984, and the payment was of a type reportable under section 6041, the payor would be required to withhold 20 percent of the \$300 payment, if, prior to January 31, 1984, the payee did not provide a taxpayer identification number to the payor, or the Internal Revenue Service notified the payor that the number provided by the payee was not correct. Moreover, because payments during 1984 to the payee, or a type subject to reporting under section 6041, would be subject to backup withholding, the payor would be required to withhold 20 percent of any payment of a type reportable under section 6041 that was made to the payee in 1985, unless the payee provided a taxpayer identification number prior to the payment date, or corrected the number provided, if the payor was notified by the Service that the previous number was not correct.

In making the determination of whether payments to a payee aggregate \$600 or more during a calendar year or whether condition (b) or condition (c) applies to a payee, the payor must aggregate and take into account payments of the same kind made to the same payee. Payments that are reportable under section 6041 are not required to be aggregated with payments reportable under section 6041A(a). Payors may, in their discretion, aggregate: (1) Payments not of the same kind to the same payee, reportable under section 6041 and 6041A(a), and (2) payments reportable under section 6041 with payments reportable under section 6041A(a).

Q-12. Does backup withholding apply to gross proceeds subject to reporting under section 6045?

A-12. Yes. Backup withholding applies to gross proceeds reportable by brokers, if the customer does not furnish a taxpayer identification number to the broker in the manner required, or the Internal Revenue Service notifies the broker that the number furnished by the customer was incorrect. With respect to a post-1983 account (as defined in A-41 of § 35a.999-1), the taxpayer identification number provided by a customer must be certified under penalties of perjury. With respect to all other accounts, the customer's taxpayer identification number is not required to be certified under penalties of perjury. For example, if a customer who had no prior relationship with a broker opens an account, arranges for the broker to sell readily tradable securities for \$100

during 1984, and the sale is required to be reported under section 6045, the gross proceeds of the sale are subject to backup withholding, if the customer does not provide: (1) His taxpayer identification number to the broker and certify it under penalties of perjury; or (2) an awaiting TIN certification (described in A-18, below).

Special rules governing backup withholding with respect to commodity futures contracts, margin account transactions, and short sale transactions will be issued in the near future.

Q-13. Does backup withholding apply to barter exchanges that are subject to reporting under section 6045?

A-13. Yes. If the barter exchange is required to report an exchange under section 6045, it is required to impose backup withholding if a member of the barter exchange does not provide a taxpayer identification number in the manner required or the Internal Revenue Service notifies the barter exchange that the number provided by the member is incorrect. With respect to an account or ongoing relationship established between a barter exchange and a member after December 31, 1983, the member is required to provide a taxpayer identification number to the barter exchange under penalties of perjury. With respect to all other accounts, the member's number is not required to be certified under penalties of perjury.

Q-14. What action is a payor of reportable interest or dividends required to take with respect to payments made on a readily tradable instrument held by a payee, if: (1) Additional readily tradable instruments of the same issue are purchased by the same payee, (2) it is the practice of the payor to combine in one account all the readily tradable instruments of the same issue owned by the same payee (and to make a single aggregate payment with respect to all readily tradable instruments of the same issue included in the account), and (3) certain of the readily tradable instruments of the same issue owned by the payee are subject to backup withholding and others are not subject to backup withholding?

A-14. If it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if certain of those instruments are subject to backup withholding and others are not subject to backup withholding, the payor is required to withhold 20 percent of the aggregate payment made with respect to all the instruments in the account. If it is not the practice of the payor to combine in one account all readily tradable instruments of the same issue owned by

a payee, the payor is required only to withhold 20 percent of the payment made on the instrument or instruments with respect to which the payee is subject to backup withholding.

For example, assume that a payee, prior to 1984, held a readily tradable instrument and that a taxpayer identification number had been provided to the payor. Assume further, during 1984: (1) The payee acquired another readily tradable instrument of the same issue through a post-1983 brokerage relationship, (2) the broker notified the payor that the payee failed to certify that he was not subject to backup withholding due to notified payee underreporting, and (3) the payor, in accordance with its customary practice, combined in one account both readily tradable instruments of the same issue owned by the payee and made an aggregate payment with respect to both instruments in the account. In the circumstance, the payor would be required to withhold 20 percent of the aggregate payment made with respect to both of the instruments of the same issue owned by the payee.

Q-15. Does backup withholding apply to original issue discount?

A-15. Yes. Original issue discount is treated as a payment of interest reportable under section 6049. Thus, original issue discount is subject to backup withholding in the same circumstances in which backup withholding applies to an actual payment of interest. In determining the timing and amount of original issue discount subject to backup withholding, rules consistent with § 31.3455(b)-1 of the Employment Taxes and Collection of Income Tax at Source Regulations shall apply. Thus, the amount to be withheld is limited to the amount of cash paid.

Q-16. If an exempt recipient files a Form W-9 (or a substitute form) in order to be exempt from backup withholding, may the payor rely on the form if the payee fails to include its taxpayer identification number on the form?

A-16. No. A Form W-9 (or substitute form) may be relied upon by a payor only if it includes the payee's taxpayer identification number. Thus, if the Form W-9 (or substitute form) provided by the payee does not contain a taxpayer identification number, the payor must withhold 20 percent of all payments made to the payee. If, however, they payor treats the payee as an exempt recipient under A-29 of § 35a.9999-1 and § 31.3452(c)-1 (b) through (p) of the Employment Taxes and Collection of Income Tax at Source Regulations without requiring the payee to file a Form W-9 (or substitute form), the payor is not required to withhold, even though

the payee has not furnished a taxpayer identification number to the payor. This exception, however, is not available to barter exchanges subject to reporting under section 6045.

Q-17. In determining whether a payee failed to provide a taxpayer identification number to a payor, within what period of time must a payor treat a taxpayer identification number or an "awaiting TIN certification" (as defined in A-18, below) provided by a payee as having been received?

A-17. As provided in A-31 of § 35a.9999-1, a payor is required to process a taxpayer identification number within 30 days after the payor receives the taxpayer identification number from the payee. Thus, for example, if a payor of a payment reportable under section 6041 or section 6041A(a) receives a taxpayer identification number on January 16, 1984, the payor must process the number on or before February 15, 1984. As a result, the payor should commence backup withholding with respect to payments made to the payee after January 16, 1984, if the payee were subject to backup withholding under A-10 and A-11, above, but the payor must cease backup withholding by February 15, 1984. The payor may, however, treat the taxpayer identification number as having been received at any time within 30 days after it is provided, so that backup withholding in the example outlined above would not have to be imposed on any payment if the payor processed the number prior to making the payment.

A payor also has 30 days after delivery by a payee of an awaiting TIN certification (as defined in A-18, below) to treat the certificate as having been received.

Exceptions To Backup Withholding

Q-18. Is a payor required to impose backup withholding during a period when a payee is waiting for receipt of a taxpayer identification number?

A-18. In general, if a payee does not provide a taxpayer identification number to a payor, the payor must withhold 20 percent of all payments made to the payee on or after January 1, 1984. However, the payee will not be subject to backup withholding for a period of 60 days, if the payee is waiting for receipt of a taxpayer identification number. In order to be entitled to the 60 day exemption, the payee must comply with the requirements of this A-18.

A payee shall be treated as if he provided a certified taxpayer identification number for a period of 60 days following the day the payor

receives a certificate signed under penalties of perjury (an "awaiting TIN certification"). (See A-17, above, for rules related to the day on which an awaiting TIN certification may be treated as having been received.) If the payor does not receive a taxpayer identification number within 60 days after the payee delivers the awaiting TIN certification to the payor, the payor must withhold 20 percent of all payments made to the payee, until the payee provides a taxpayer identification number to the payor. The awaiting TIN certification must contain statements: (1) That the payee has not been issued a taxpayer identification number, (2) that the payee has applied for a number or intends to apply for a number in the near future, and (3) that the payee understands that if the payee does not provide a taxpayer identification number to the payor within 60 days, the payor is required to withhold 20 percent of any payments made thereafter to the payee until a number is provided. Language that is substantially similar to the following will satisfy this requirement:

I certify, under penalties of perjury, that a taxpayer identification number has not been issued to me, and that I mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office (or I intend to mail or deliver an application in the near future). I understand that if I do not provide a taxpayer identification number to the payor within 60 days, the payor is required to withhold 20 percent of all reportable payments thereafter made to me until I provide a number.

The foregoing certification, at the discretion of the payor, may be included on the same form as the certifications required by A-32 of § 35a.9999-1.

The payor may use Form W-9, as currently issued by the Internal Revenue Service, to satisfy the requirements of this A-18. If the Form W-9 is used, the payee should write "Applied For" in the space reserved for the taxpayer identification number. The payor also should inform the payee, in supplemental instructions or orally, "that if a taxpayer identification number is not received by the payor within 60 days, the payor is required to withhold 20 percent of all reportable payments thereafter made to the payee until the payor receives a number from the payee." Future editions of the Form W-9 will contain the supplemental instruction.

A payee who seeks to qualify for the 60 day exemption from backup withholding also must certify, under penalties of perjury, that the payee is

not subject to backup withholding due to notified payee underreporting, when required to do so by A-32 of § 35a.9999-1 or A-12 or A-13, above. Thus, a payee who establishes an account or acquires an instrument after December 31, 1983, will be subject to backup withholding irrespective of whether the payee certifies that the payee is waiting for receipt of a taxpayer identification number, if the payee fails to make the certification described in A-32 of § 35a.9999-1 or A-12 or A-13, above, concerning notified payee underreporting.

When a payee who opens an account or acquires an instrument after December 31, 1983, and who qualifies for this 60 day exemption furnishes a taxpayer identification number to the payor, the payee is required to certify under penalties of perjury, in accordance with A-32 of § 35a.9999-1 or A-12 or A-13, above, that the taxpayer identification number provided is correct. If no such certification is provided, the payor must institute backup withholding.

A special rule is provided for accounts that are established, or instruments that are acquired (in the case of reportable interest or dividend payments) or relationships established (in the case of other reportable payments) before January 1, 1984. All payees of such accounts, instruments, or relationships will be treated as if they are waiting for receipt of a taxpayer identification number, without any action on their part, until January 16, 1984. The payor must withhold 20 percent of any payment made after January 16, 1984, unless: (1) The payee has certified, as required by this A-18, that the payee is waiting for receipt of a taxpayer identification number or (2) the payor receives a taxpayer identification number from the payee. If, however, a payor has been provided with a Form W-9 (or substitute form) with an "Applied For" designation, by a payee of an account, instrument, or relationship established before January 1, 1984, the form will be valid for 60 days, notwithstanding the fact that the supplemental instruction referred to above was not provided to the payee.

Assume, for example, that the payee of an account established before January 1, 1984, delivered an awaiting TIN certification to the payor on December 30, 1983 and the payor processed the certification that day. The payor should not impose backup withholding on payments made to the payee prior to February 29, 1984, because the payee is treated under this A-18 as having provided a taxpayer identification number during that period.

If the payor did not receive a number from the payee prior to February 29, the payor would be required to withhold 20 percent of any payment made to the payee on or after February 29, and before the payee provided a number. (See A-17, above, however, for the rules relating to the date on which the payor may be treated as having received the awaiting TIN certification or a taxpayer identification number.) As another example, assume that a payee of an account established before January 1, 1984, delivered an awaiting TIN certification to the payor on January 12, 1984 and processed it that day. The payor should not impose backup withholding on payments made between January 1 and January 12, because the payee would be treated during that period as if he had provided a taxpayer identification number under the rule set forth above. Moreover, backup withholding would not apply to payments made during the 60 days following January 12, because the payee on that date delivered an awaiting TIN certification. Backup withholding would begin only if the payor had not received a taxpayer identification number within that 60 day period. (See A-17, above, however, for the rules relating to the dates on which the payor may be treated as having received the certificate or the taxpayer identification number.)

The 60 day exemption applicable when a payee provides an awaiting TIN certification applies to payments made on readily tradable instruments only if the instrument is acquired directly from the payor (including a broker that holds the instrument in street name), unless the payee provides an awaiting TIN certification directly to the payor. Thus, if a broker opens a new account after 1983 and acquires a readily tradable instrument for a payee who has no taxpayer identification number, and the instrument is not held in street name, the broker must advise the payor that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether an awaiting TIN certification is provided to the broker. The payor in such a situation, however, must include in the notice sent to a payee (as required by A-39 of § 35a.9999-1) a statement informing the payee that, if the payee does not have a taxpayer identification number, the payee will be exempt from backup withholding for a period of 60 days following the payor's receipt of an awaiting TIN certification, provided that the payee signs an awaiting TIN certification and returns it to the payor. (See A-17, above, for the rules relating to the date on which the payor may be

treated as having received the certificate.) An awaiting TIN certification, in a form permitted by this A-18, should be included with the notice. The form of the notice described in A-39 of § 35a.9999-1 and this A-18 is set forth in the Appendix to this temporary regulation.

Neither the 60 day exemption nor the special presumption applicable to accounts, instruments, and relationships established before January 1, 1984 applies to window transactions, as defined in A-9, above, and Q-42 of § 35a.9999-1. Therefore, a payor is required to withhold 20 percent of any window transaction payment whenever a payee of such a payment does not provide a taxpayer identification number of the payor.

Q-19. Are payors required to withhold on payments that are less than \$10, or that, if determined on an annualized basis, would be less than \$10 (a "minimal payment")?

A-19. A payor of reportable interest or dividends has the option not to withhold on minimal payments, or, alternatively, to withhold on payments of any amount. The principles of § 31.3452(d)-1 of the Employment Taxes and Collection of Income Tax at Source Regulations shall be utilized in determining whether a reportable interest or dividend payment may be treated as a minimal payment with respect to which backup withholding is not required.

The annualization requirement of § 31.3452(d)-1 of the Employment Taxes and Collection of Income Tax at Source Regulations shall not apply to window transaction payments. A payor may choose not to withhold on any window transaction payment that is less than \$10. However, all window transaction payments made at the same time must be aggregated.

The \$10 minimal payment exception does not apply to other reportable payments (*i.e.*, payments other than reportable interest or dividends), except payments reportable under section 6045. Payments reportable under section 6045, like reportable interest and dividends, are subject to backup withholding, at the payor's option, only if the reportable amount exceeds \$10. The annualization rule of § 31.3452(d)-1 of the Employment Taxes and Collection of Income Tax at Source Regulations is inapplicable to payments reportable under section 6045.

Q-20. Are beneficiaries of trusts or estates subject to backup withholding on distributions from the trust or estate?

A-20. A beneficiary of a trust or estate is subject to backup withholding only if the trust or estate is a payor of a reportable payment. If a trust or estate receives a payment of interest,

dividends or any other reportable amount, and if the trust or estate is not a grantor trust (and thus reports receipt of the reportable amount on a Form 1041 (see § 1.671-4 of the Income Tax Regulations)), distributions by the trust or estate to the beneficiaries will not be considered to be a payment of interest, dividends or other reportable amounts.

Special rules are provided, however, with respect to trusts when a grantor is considered the owner of all or a portion of the trust (and there are included in computing the grantor's tax liability those items of income attributable to that portion of the trust) (a "grantor trust"). The special rules applicable to such trusts do not affect payors of payments made to a grantor trust. Rather, the payments to the trust are subject to the general rules of backup withholding. Payments between a grantor trust and its grantors, however, are subject to the special rules, which differ depending on the number of grantors.

If a trust has ten or fewer grantors, payments of interest, dividends or other reportable amounts (except gross proceeds reportable under section 6045) made to the trust are considered payments of the same kind made by the trust (as payor) to each grantor (as payee), in proportion to each grantor's ownership of the trust. Each grantor of such a trust is treated as having received his or her proportionate share of the reportable payment on the day the payment is received by the trust. Accordingly, any reportable payments made to the trust are treated as reportable payments made by the trust to the grantor or grantors and are subject to all applicable backup withholding requirements. If, for example, a grantor of a trust having 10 or fewer grantors had not provided a taxpayer identification number to the trust in the manner required, the trustee would be required to withhold and remit 20 percent of the reportable payment. In addition, the trustee of a grantor trust having ten or fewer grantors, established on or after January 1, 1984, may not certify either that the trust is not subject to backup withholding due to notified payee underreporting or that the taxpayer identification number provided is correct, unless each grantor has furnished the trustee with such a certification signed under penalties of perjury.

If a grantor trust has more than ten grantors, the trustee is required to treat payments of interest, dividends or other reportable payments (except gross proceeds reportable under section 6045) made to the trust as payments of the same kind made by the trust to each

grantor, in an amount equal to the distribution made by the trust to each grantor, on the date on which the distribution to the grantor is paid or credited. The trust is thus treated as a payor of the same types of payments received by the trust, for the purpose of the backup withholding requirements. The trustee of such a trust is required to withhold 20 percent of amounts paid or credited to any grantor who is subject to backup withholding if: (1) The grantor fails to provide a taxpayer identification number to the trust, (2) the grantor fails to provide a certification required by A-32 of § 35a.9999-1, (3) the trust is required to impose backup withholding under the special rules applicable to readily tradable instruments (A-40 of § 35a.9999-1), or (4) the Internal Revenue Service notifies the trustee that the grantor provided an incorrect taxpayer identification number. If the reportable amount of the distribution is greater than the amount distributed, the trustee may, in its discretion subject the entire reportable amount to backup withholding.

For example, if a grantor trust having 100 grantors received a reportable interest payment of \$100,000, which was of a type reportable under section 6049, and made a cash distribution of \$900 to each grantor (after deducting certain expenses), the trustee would be required to withhold 20 percent of the \$900 payment made to any grantor who was subject to backup withholding. Similarly, if a grantor trust having 100 grantors received an oil royalty payment of \$100,000, which was of a type reportable under section 6041, and the trust made a cash distribution of \$8,000 to each grantor (after deducting certain production related taxes and expenses), the trustee would be required to withhold 20 percent of the \$8,000 payment made to any payee who had not provided a taxpayer identification to the trust. Because the certifications required by A-32 of § 35a.9999-1 do not apply to payments of a type reportable under section 6041, grantors of the trust would not be subject to backup withholding if they failed to make such certifications.

In addition, the trustee of a grantor trust having more than ten grantors may certify that the trust's taxpayer identification number is correct and that the trust is not subject to backup withholding due to notified payee underreporting, without regard to the status of the individual grantors of the trust.

Q-21. Are reportable payments made to exempt recipients subject to backup withholding?

A-21. Answer 29 (A-29) of § 35a.9999-1 provides that a payor of reportable interest of dividends is not required to withhold on payment made to exempt recipients. Backup withholding also is not required with respect to any other reportable payment (except barter exchange transactions reportable under section 6045) made to an exempt recipient described in § 31.3452(c)-1 (b) through (p) of the Employment Taxes and Collection of Income Tax at Source Regulations. A middleman, however, shall include only a nominee or custodian known generally in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc. Nominee List. The exempt recipients described in this A-21 shall also be so treated for purposes of § 1.6045-1(e)(3)(i) of the Income Tax Regulations.

Foreign Persons

Q-22. Will a form relating to exemptions for foreign persons be issued by the Internal Revenue Service?

A-22. The Service is currently preparing Form W-8, on which a payee may sign, under penalties of perjury, the statement described in § 1.6049-5(b)(2)(iv) and § 1.6045-1(g)(1) of the Income Tax Regulations, whichever is applicable. See A-51, A-52 and A-55 of § 35a.9999-1 for other requirements. The Form W-8, however, may not be available prior to the time that payors intend to make the mailing or mailings required by A-52 or A-55 of § 35a.9999-1. Accordingly, payors should use the substitute form described in § 1.6049-5(b)(2)(iv) or § 1.6045-1(g)(1), whichever is applicable, on which a payee may make the certifications concerning the payee's foreign status and provide his name, address, and taxpayer identification number (if any). If a payor sends a substitute Form W-9 to a payee, the payor may incorporate the required foreign status certification on the substitute Form W-9.

Record Retention

Q-23. Under what circumstances are payors required to retain the documents they receive from payees?

A-23. With respect to a pre-1984 account or instrument (as defined in A-34 of § 35a.9999-1) or any brokerage relationship that is not a post-1938 account (as defined in A-41 of § 35a.9999-1), the payor is not required to retain either: (1) A form on which a payee certified concerning the correctness of a taxpayer identification number, or (2) an awaiting TIN certification, if the payor can establish the existence of procedures that are

reasonably calculated to ensure that a payee who so certified is accurately identified in the payor's records. With respect to all other accounts or instruments, however, payors are required to retain all certification documents in the same manner and for the same period of time that the payor retains other account-creation or instrument-purchase documents.

Appendix

The notice required by A-39 of § 35a.9999-1 and A-18, above, shall be substantially in the form provided below:

Recently, you purchased [identify security acquired]. Because of the existence of one or more of the following conditions, payments of interest, dividends, and other reportable amounts that are made to you will be subject to backup withholding of tax at a 20 percent rate: [specify the condition or conditions applicable]

(1) You failed to provide a taxpayer identification number, or failed to provide such number under penalties of perjury, in connection with the purchase of the acquired security. (An individual's taxpayer identification number is his social security number.)

(2) The taxpayer identification number that you provided is not your correct number.

(3) You are subject to backup withholding due to notified payee underreporting (section 3406(a)(1)(C) of the Internal Revenue Code).

(4) You failed to certify that you are not subject to backup withholding due to notified payee underreporting (section 3406(a)(1)(D) of the Internal Revenue Code).

If condition (1) or (2) applies, you may stop withholding by providing your taxpayer identification number on the enclosed Form W-9, signing the form, and returning it to us. If you do not have a taxpayer identification number, but have (or will soon) apply for one, you may so indicate on the Form W-9; in that case, you will not be subject to withholding for a period of 60 days, but you must provide us with your taxpayer identification number promptly after you receive it in order to avoid withholding after the end of the 60-day period. Certain persons, described on the enclosed Form W-9, are exempt from withholding. Follow the instructions on that form if applicable to you.

If condition (3) applies, and you do not believe you are subject to withholding due to notified payee underreporting, please contact your local Internal Revenue Service office.

If condition (4) applies, you may stop withholding by certifying on the enclosed Form W-9 that you are not subject to backup withholding due to notified payee underreporting, signing the form, and returning it to us.

If more than one condition applies, you must remove *all* applicable conditions to stop withholding.

Please address any questions concerning this notice to:

[Insert Payor Identifying Information]

(Do not address questions to the broker who purchased the securities for you.)

Par. 2. Question 42 (Q-42) of § 35a.9999-1 is amended by removing the phrase "Treasury bills," in the question thereof.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 3406 (a), (b), (c), (e), (g), (h), and (i), section 6041, section 6041A(a), section 6042(a), section 6044(a), section 6045, section 6049 (a), (b), and (d), section 6103(q), section 6109, section 6302(c), section 6676, and section 7805 of the Internal Revenue Code of 1954 (97 Stat. 371, 372, 373, 376, 377, 378, 379; 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i), 68A Stat. 745; 26 U.S.C. 6041, 96 Stat. 601; 26 U.S.C. 6041A(a), 96 Stat. 587; 26 U.S.C. 6042(a), 96 Stat. 587; 26 U.S.C. 6044(a), 96 Stat. 600, 26 U.S.C. 6045, 96 Stat. 592, 594, 26 U.S.C. 6049 (a), (b), and (d), 90 Stat. 1667, 26 U.S.C. 6103(q), 75 Stat. 828; 26 U.S.C. 6109, 68A Stat. 775, 26 U.S.C. 6302(c), 68A Stat. 917; 26 U.S.C. 7805) and in sections 104, 105, and 108 of the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369, 371, 380, and 383).

M. Eddie Heironimus,
Acting Commissioner of Internal Revenue.

Approved:
Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.

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