

MANAGEMENT DIRECTIVE


315.26 Amended
Number

COMMONWEALTH OF PENNSYLVANIA GOVERNOR'S OFFICE

Subject:

Backup Withholding on Missing and/or Incorrect Taxpayer Identification Numbers

By Direction Of:



Michael H. Hershock, Secretary of the Budget

Date:

January 24, 1994

In accordance with the Internal Revenue Code, payers are required to withhold a percentage of all reportable payments submitted to IRS that contained either an obviously incorrect or missing Taxpayer Identification Number. This amendment contains changes to procedures for reporting and reconciling backup withholding.

1. PURPOSE. To ensure that all Commonwealth agencies understand and comply with Internal Revenue Service (IRS) regulations requiring backup withholding.

2. SCOPE. This directive applies to all agencies under the Governor's jurisdiction. It is recommended that other agencies adopt similar policy and procedures.

3. OBJECTIVE. To establish policy, responsibilities, and procedures for the collection and remittance of backup withholding on missing and/or incorrect Taxpayer Identification Numbers.

4. DEFINITIONS.

- **a. Backup withholding.** Thirty-one percent of a reportable payment to a vendor, contractor, or estate of a former employe which is required to be withheld and remitted to IRS.

b. Taxpayer Identification Number (TIN). The number assigned by the federal government to identify an individual taxpayer or business firm. An individual entrepreneur may be identified by a Social

Security Number (SSN). A business firm uses a nine-digit Employer Identification Number (EIN) assigned by IRS.

5. POLICY.

a. Commonwealth agencies are to comply with IRS Publication 1281, *Backup Withholding on Missing and Incorrect TINs*, and with the specific language provided for "B" Notices in Enclosures 1 and 2. •

b. Comptrollers will not process payments against any contract, procurement document, or invoice not containing a valid TIN. •

6. RESPONSIBILITIES.

a. **Agencies** are responsible for ensuring the integrity of the TIN by:

(1) Requiring a valid TIN on every procurement document or contract with a vendor whose TIN is not on the Vendor Master File. •

(2) Ensuring that a valid TIN appears on every invoice submitted for payment. •

Distribution: B

(3) Notifying payees of missing and/or incorrect TINs and procuring corrected Forms W-9 in accordance with IRS Publication 1281.

(4) Cooperating with comptrollers in establishing and maintaining correct TINs on the Vendor Master File.

NOTE: TINs are required for all payments, whether reportable or not, including tort claims, payments to crime victims, grants to individuals and organizations, vendor payments, contracts, etc.

b. Comptrollers are responsible for:

(1) Establishing and maintaining correct TINs on the Vendor Master File.

(2) Assisting agencies in procuring corrected Forms W-9 for missing and/or incorrect TINs.

(3) Withholding and remitting to IRS required backup withholding.

- (4) Filing required reconciling reports with
- IRS.

7. PROCEDURES.

Procedure 1: First "B" Notice.

Action By	Step	Action
Agency or Comptroller.	1.	Receives from IRS a listing of Form 1099 accounts with missing and/or incorrect TINs.
	2.	Forwards First "B" Notice and Form W-9 to each payee listed in accordance with IRS Publication 1281 and Enclosure 1.
Payee.	3.	Completes Form W-9 and returns to issuing office (agency or comptroller).
Agency.	4.	Forwards completed Form W-9 to comptroller.
	5.	After required waiting period, forwards to comptroller a listing of payees who did not respond to request for corrected Form W-9.

Action By	Step	Action
Comptroller.	6.	For payees responding with corrected Forms W-9, enters valid TIN data on Vendor Master File.
	7.	For payees failing to respond with corrected Forms W-9, generates a list of payees subject to backup withholding.
	8.	Monitors future reportable payments to determine whether payee remains on list of payees subject to backup withholding.
	9.	If payee is subject to backup withholding, reduces requested reportable payment by appropriate backup percentage and processes payment of the reduced amount to payee.
	10.	Transfers to Departmental Backup Withholding Account the amount withheld for backup withholding.
	11.	Establishes for each payee subject to backup withholding an account for recording amounts paid and amounts backup withheld.
	12.	Remits backup withholding to a federal depository bank using Form 8109.

NOTE: IRS Publication 15, *Circular E – Employer's Tax Guide*, provides guidance regarding requirements for interim deposits of backup withholding. IRS published Simplified Payroll Tax Deposit Rules which became effective January 1, 1993, (Enclosure 3). The new rules include instructions for depositing backup withholding.

Action By	Step	Action
• Comptroller.	13.	Files Form 945 to reconcile Form 8109 deposits with total backup withholding reported on individual Forms 1099.

Procedure 2: Second "B" Notice.

Action By	Step	Action
Agency or Comptroller.	1.	Receives from IRS or Social Security Administration (SSA), for the second time within three years, a listing of Form 1099 or Form W-2, W-2P, W-2R accounts with missing and/or incorrect TINs.
•	2.	Forwards Second "B" Notice and Form W-9 to each payee in accordance with IRS Publication 1281 and Enclosure 2.
Comptroller.	3.	Generates a list of payees subject to backup withholding.
	4.	Monitors future reportable payments to determine whether payee remains on list of payees subject to backup withholding.
	5.	If payee is subject to backup withholding, reduces requested reportable payment by appropriate backup percentage and processes payment of the reduced amount to payee.
	6.	Transfers to Departmental Backup Withholding Account the amount withheld for backup withholding.
	7.	Establishes for each payee subject to backup withholding an account for recording amounts paid and amounts backup withheld.
•	8.	Remits backup withholding to a federal depository bank using Form 8109.
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Action By	Step	Action
Comptroller.	9.	Files Form 945 to reconcile Form 8109 deposits with total backup withholding reported on Forms 1099.

Payee.	10. a.	In the case of an incorrect SSN, contacts the local SSA office and takes the necessary action to authorize the SSA to forward a Form SSA-7028 directly to the payor with a copy of the "B" Notice from the payor attached, or
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	b.	In the case of an incorrect EIN, contacts, in writing, the IRS (Attn: Entity Section) where the payee files an income tax return, enclosing a copy of the "B" Notice received from the Commonwealth, and requests the IRS to provide a Letter 147C to the payee.
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	11.	On receipt of the Letter 147C from IRS, forwards to the Commonwealth agency or comptroller the Letter 147C and a copy of the "B" Notice.
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Agency.	12.	Forwards to comptroller completed Form SSA-7028 or Letter 147C, each with copy of "B" Notice.
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Comptroller.	13.	Enters valid TIN data on Vendor Master File.
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3 Enclosures:

- 1 – First "B" Notice
- 2 – Second "B" Notice
- 3 – Simplified Payroll Tax Deposit Rules

This directive supersedes Management Directive 315.26 dated September 14, 1992, Revision No. 1 dated November 24, 1992, and Revision No. 2 dated January 5, 1993.

First B Notice

IMPORTANT TAX NOTICE * * * * * ACTION IS REQUIRED

We need a Form W-9 from you within 30 days.

Backup Withholding Warning!

Account Number _____

Current Name on Account _____

Current TIN on Account _____

The Internal Revenue Service (IRS) has notified us that the Taxpayer Identification Number (TIN) on your account with us does not match their records. The IRS considers a TIN as incorrect if either the name or number shown on an account does not match a name and number combination in their files or the files of the Social Security Administration (SSA). If you do not take appropriate action to help us correct this problem by [insert the date after which you will begin backup withholding (which may be no later than 30 business days after the date that you received the B notice from the IRS (or a broker))], the law requires us to withhold 20 percent of the interest, dividends, and certain other payments that we make to your account. This is called backup withholding.

In addition to backup withholding, you may be subject to a \$50 penalty by the IRS for failing to give us your correct name/TIN combination.

This notice tells you how to help us make your account records accurate and how to avoid backup withholding and the penalty.

Why Your TIN May Be Considered As Incorrect.

An individual's TIN is his or her Social Security Number (SSN). Often a TIN does not match IRS records because a name has changed through marriage, divorce, adoption, etc., and the change has not been reported to SSA, so it has not been recorded in SSA's files.

Sometimes an account or transaction may not contain the correct SSN of the actual owner. For example, an account in a child's name may reflect a parent's SSN. (An account should be in the name and SSN of the actual owner.)

What You Need To Do.

Individuals

If you have never been assigned a Social Security Number (or if you lost your social security card and do not know your SSN):

1. Call your local SSA office and find out how to obtain an original (or a replacement) social security card. Then apply for it.
2. Read the enclosed Form W-9; write the words "applied for" on the form; sign it, and return it to us. This is called an awaiting TIN Certificate and applies only to those persons who have never been issued an SSN.
3. When you receive your social security card, send us *another* Form W-9 with your SSN and name as shown on the card. An awaiting TIN certification will only stop or prevent backup withholding before September 1, 1993.

If you already have a social security number: Compare the name and SSN on your account with us (shown on page 00) with the name and SSN shown on your social security card. Then use the chart below to decide what action to take.

IF—

1. The last name and SSN on your account agree with the last name and SSN on your social security card_____
2. The SSN on your account is different from the SSN on your social security card, but the last name is the same_____
3. The last name on your account is different from the last name on your social security card, but the SSN is the same on both_____
4. Both the last name and SSN on your account are different from the last name on your social security card_____

THEN—

1. Contact your local SSA office to ascertain whether the information on SSA's records is different from that on your social security card, and to resolve any problem. Also, put your name and SSN on the enclosed Form W-9 following the instructions on the form. Sign the Form W-9 and send it to us.
2. Put your name and SSN, as shown on your social security card, on the enclosed Form W-9, following the instructions on the form, sign it, and send it to us. You do not need to contact SSA.
3. Take one of the following steps (but not both):
 - (a) If the last name on your *account* is correct, contact SSA to correct the name on your social security card. Put your SSN and name shown on your account on the enclosed Form W-9 following the instructions on the form, sign it, and send it to us.
 - [Optional language:** If you are not able to contact SSA at this time, you can provide us with both last names. Put your SSN and the name shown on your social security card plus the last name shown on your account (in that order) on the enclosed Form W-9 following the instructions on the form, sign it, and return it to us. For example, if your social security card lists your maiden name, give us your SSN and your name in the following order: First/maiden/married name. Please note, however, that you should contact SSA as soon as possible so they can correct their records.]
 - (b) If the last name on your *social security card* is correct, put that name and your SSN on the enclosed Form W-9 following the instructions on the form. Sign it and return it to us. You do not need to contact SSA.
4. (a) If the last name and SSN on your social security card are correct, put that name and SSN on the enclosed Form W-9 following the instructions on the form. Sign it and send it to us. You do not need to contact SSA.
 - (b) If the last name on your account and the SSN on your social security card are correct, follow the procedure in section 3(a) above. Be sure to put the name shown on your account and the name shown on your social security card on the Form W-9.

Once you have resolved what your correct name and TIN combination is, you must provide this information to us (and all your other payors) for all of your accounts to avoid a problem in the future. If you are required to visit an SSA office, take this notice, your social security card, and any other related documents with you. Before you go, you should call SSA so that they can explain what other documents you need to bring.

Instructions for Nonindividuals and Certain Sole Proprietors

For most nonindividuals (such as trusts, estates, partnerships, and similar entities), the TIN is the employer identification number (EIN). The EIN on your account may be incorrect because it does not contain the number of the *actual* owner of the account. For example, an account of an investment club or bowling league should reflect the organization's own EIN and name, rather than the SSN of a member. Please put the name and EIN on the enclosed Form W-9, sign it, and send it to us.

A sole proprietor must furnish his or her individual name and either his or her SSN or the EIN for his or her sole proprietorship. In addition to his or her individual name, the sole proprietor may also furnish the business name for the sole proprietorship, provided his or her individual name is listed before the business name. A sole proprietor must not furnish only the business name. Please put the individual name and SSN or EIN on the enclosed Form W-9, sign it, and send it to us.

Important Reminder!

YOU MUST SEND US A SIGNED IRS FORM W-9 BY [Insert the date after which you will begin backup withholding (which may be no later than 30 business days after the date that you received the B notice from the IRS (or a broker))] even if the name and number (SSN or EIN) on your account with us match the name and number (SSN or EIN) on your social security card or the document issuing you an EIN. If we do not receive your Form W-9, and any other documents that we need to change the name or TIN (or both) on your account, we are required by law to withhold 20 percent from any reportable payment that we pay to your account after [insert the same date as the one inserted at the beginning of this paragraph.] until we receive the necessary documents.

A Form W-9 is enclosed for your convenience, as well as any additional documents allowing us to change the name/TIN combination on your account.

Second B Notice

IMPORTANT TAX NOTICE * * * * * ACTION IS REQUIRED

YOU MUST HAVE THE IRS OR SSA VALIDATE YOUR TAXPAYER IDENTIFICATION NUMBER AND RETURN IT TO US WITHIN 30 DAYS

Second Backup Withholding Warning!

Account Number _____

Current Name on Account _____

Current TIN on Account _____

We have received notice from the Internal Revenue Service (IRS) twice within three years stating that the combination of the name and taxpayer identification number (name/TIN combination) on your account with us is incorrect. (Your account number, current name on the account, and current taxpayer identification number ("TIN") on the account are shown above.) A name/TIN combination is incorrect if it does not match a name/TIN combination shown on the records of the Social Security Administration (SSA) or the IRS.

You should follow the instructions below to correct this problem and send the corrected information to us by [insert the date after which you will begin backup withholding (which may be no later than 30 business days after the date that you received the second B notice from the Service (or a broker))]. If we do not have the correct information by that date, the law requires us to withhold 20 percent of the interest, dividends, and certain other payments that we make to your account after that date.

Section 3406 of the Internal Revenue Code requires that we withhold 20 percent in tax, called backup withholding, when you do not give us your correct name/TIN combination. Because of the notices we received from the IRS, we are now required to disregard any future name/TIN combination you furnish us for your account (whether or not you certify your TIN under penalties of perjury) unless the SSA (or, in the case of an incorrect employer identification number, the IRS) validates your name/TIN combination. Also, the IRS may charge you a \$50 penalty for failing to provide us with your correct name/TIN combination.

What You Need To Do

Follow the instructions below to correct your account record to avoid backup withholding on your account (or to stop it once it has begun) and to avoid the penalty.

Individuals

Instructions for Incorrect Social Security Numbers

If the incorrect TIN you furnished us is a social security number, you must:

1. Contact your local SSA office by telephone and ask what you need to do to obtain a validated social security number for backup withholding tax purposes;
2. Give a copy of this notice to the SSA; and
3. Request and authorize the SSA to send Form SSA-7028, Notice to Third Party of Social Security Number Assignment, directly to us with a copy of this notice attached.

Nonindividuals or Certain Sole Proprietors

Instructions for Incorrect Employer Identification Numbers

If the incorrect TIN you furnished us is an employer identification number, you must:

1. Write the Internal Revenue Service Center (Attn: Entity Section) where you file your income tax return and ask the IRS to send you a Letter 147C;
2. Enclose a copy of this notice in your letter to the Internal Revenue Service Center; and

3. When the IRS sends you the Letter 147C, send it to us with a copy of this notice attached.

Simplified Payroll Tax Deposit Rules

We have recently finalized the regulations for depositing federal taxes. The new rules take effect January 1, 1993, but include a one-year transition period to allow employers to change their payroll systems.

The previous deposit rules were complex and required that employers constantly monitor the amount of accumulated taxes withheld from employees' paychecks. In some cases, deposits were required eight times each month and the deposit schedule may have changed frequently. Employers had so much difficulty meeting the deposit requirements that we estimated that 30 percent of all employers required to make deposits were penalized each year for inadequate or late deposits.

In May, we proposed changes to simplify and standardize the system

and asked for comments from the public, business and payroll processors. IRS Commissioner Shirley D. Peterson thanked the public, business owners and the payroll community for their suggestions on ways to improve the regulations. "Together, we've made a significant step in reducing the burden on business taxpayers while strengthening the important federal tax deposit system," Commissioner Peterson said.

Under the new regulations, employers will deposit withheld taxes on either a monthly or semi-weekly basis. The determination of which deposit schedule applies will be made by looking back at the employment taxes reported for a 12-month lookback period. . . . July 1 through June 30 of the prior year. We will tell employers by November each year which schedule they will follow for the coming year.

Employers who reported \$50,000 or less will deposit monthly. More than 75 percent of all employers, and

most small business employers, will qualify as monthly depositors. These deposits will be due by the 15th day of the following month.

Employers who will deposit semi-weekly are those who reported over \$50,000 during the lookback period. For paydays on Wednesday, Thursday, or Friday, the deposit will be due by the Wednesday after the payday. For all other paydays, the deposit will be due by the Friday following payday. All new employers will be monthly depositors.

The regulations also contain special rules and exceptions which carry over from the present rules. Employers accumulating \$100,000 during a monthly or semi-weekly period must deposit by the next banking day. Also, employers accumulating less than \$500 during the quarter may skip the deposits altogether and send full payment with their quarterly employment tax returns.

As a safe harbor, an employer

who under deposits will not be penalized if the shortfall is \$100 or less or less than two percent of the amount which should have been deposited.

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