

MEMO# 14885

July 9, 2002

IRS ISSUES PROPOSED GUIDANCE ON BACKUP WITHHOLDING AFTER MULTIPLE NOTICES OF INCORRECT PAYEE "TINS"

[14885] July 9, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 18-02 TAX MEMBERS No. 28-02 TRANSFER AGENT ADVISORY COMMITTEE No. 50-02 RE: IRS ISSUES PROPOSED GUIDANCE ON BACKUP WITHHOLDING AFTER MULTIPLE NOTICES OF INCORRECT PAYEE "TINS" The Internal Revenue Service ("IRS") has issued the attached proposed regulations which would simplify the backup withholding obligations of payors by treating two or more incorrect taxpayer identification number ("TIN") notices with respect to the same payee's account for the same tax year as one notice, even if the payor receives such incorrect TIN notices in different calendar years. The proposed regulations also would clarify that an information return filer need not resolicit a payee's TIN in response to a penalty notice, if the filer already has sent a required "B" notice to the payee for the same tax year. The proposed regulations are described more fully below. The proposed regulations would apply the beginning of the first calendar year after they are published in final form. A public hearing on the proposed regulations has been scheduled for October 22, 2002. Please advise the undersigned of any comments on the proposed regulations by Tuesday, September 3, 2002. Multiple Notices of Incorrect Payee TINs Code section 3406 requires a payor to backup withhold on reportable payments where the IRS notifies the payor that the TIN furnished by the payee is incorrect. Upon receipt of the first incorrect TIN notice, the payor must notify the payee that backup withholding will apply if the payee does not furnish a certified TIN (commonly referred to as a "B" notice). If the payor receives a second incorrect TIN notice for the same payee's account within a three year period, the payor must send a second "B" notice to the payee stating that the payee will be subject to backup withholding unless the payor receives verification of the payee's TIN from the Social Security Administration or IRS. If a payor receives two or more notices of incorrect TIN with respect to a payee's account within the same calendar year, current regulations provide that the multiple notices may be treated as one notice for purposes of sending out a first "B" notice and must be treated as one notice for purposes of sending out a second "B" notice. However, current regulations do not treat two or more notices of incorrect TIN relating to the same payee and same tax year, but which are received by the payor in different calendar years, as one notice. Thus, a payor must send a first "B" notice to the payee after receipt of the first notice of incorrect TIN, and a second "B" notice after receipt of a second notice of incorrect TIN, even if the second notice relates to an information return filed for the same tax year as the first notice. In this case, the payee must respond to the second "B" notice by obtaining verification of its TIN from the Social Security Administration or IRS. Under the proposed regulations, a payor receiving two or more notices of incorrect TIN with respect to the same payee's account for the same tax year

would be treated as receiving one notice. This rule would apply regardless of the calendar year(s) in which the payor receives the incorrect payee TIN notices. Resolicitation of Payee TINs in Response to a Penalty Notice Under current regulations, if an information return filer receives a penalty notice with respect to an incorrect payee TIN and an incorrect TIN notice under Code section 3406(a)(1)(B) during the same calendar year for the same payee, the filer will satisfy its TIN solicitation requirements for penalty purposes by sending a "B" notice to the payee. However, the filer must resolicit a payee's TIN if the filer receives an incorrect TIN notice with respect to the payee in one calendar year, and the following calendar year receives a penalty notice with respect to the same payee and the same tax year as the incorrect TIN notice. Under the proposed regulations, a filer would not be required to resolicit a payee's TIN if the filer receives an incorrect TIN notice under Code section 3406(a)(1)(B) with respect to the payee in one calendar year, and the following calendar year receives a penalty notice with respect to the same payee and the same tax year as the incorrect TIN notice. This rule only would apply if the filer has sent the required "B" notice to the payee. Deanna J. Flores Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14885, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14885. Attachment (in .pdf format)