

**SUPPORTING STATEMENT
(REG-116641-01 (NPRM), TD 9136 (Final), REG-163195-05(NPRM))**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 6041(a) of the Internal Revenue Code (Code) requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any one taxable year to file information returns with the IRS and to furnish information statements to payees. Among other items, the payor must include the payee's name and taxpayer identification number (TIN) on the information return and the information statement.

Section 3406(a)(1) of the Code requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) in certain situations, including if: (1) the payee fails to furnish his TIN to the payor as required; or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect. Section 3406(i) provides that the Secretary shall prescribe the regulations necessary or appropriate to carry out the purposes of section 3406.

Section 31.3406(j)-1 of the Employment Tax Regulations provides that the Commissioner has the authority to establish TIN matching programs through revenue procedures or other appropriate guidance. A payor participating in a TIN matching program may contact the IRS with respect to the TIN furnished by a payee before filing information returns for reportable payments. The regulations further provide that the IRS will inform the payor whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained by the IRS for the TIN matching program.

A payment card transaction is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. Information reporting compliance is difficult in payment card transactions because an invoice may not be issued, and the employee of the cardholder/payor may not request and obtain the name/TIN combination of the merchant/payee at the time of the transaction. In addition, backup withholding may be difficult because a merchant receives payment from the payment card organization within a few days after the transaction, but the cardholder does not pay the payment card organization until after it receives a payment card monthly billing statement from the payment card organization.

The IRS issued proposed regulations (REG-116641-01) and final regulations in T.D. 9136 (69 FR 41938) that allow a payment card organization to act on behalf of a

cardholder/payor for purposes of soliciting, collecting, and validating the names/TINs of the merchant/payees through TIN matching. The final regulations provide that backup withholding does not apply to payment card transactions if the reportable payments are made through a Qualified Payment Card Agent (QPCA) and the payee is a qualified payee. Under the final regulations, a QPCA must notify a cardholder/payor of any merchant/payees that are not qualified payees.

Some taxpayers subject to the final regulations have requested that the regulations in section 31.3406(g)-1(f) be amended to allow a merchant to accept a QPCA's payment card even if it opts out of the QPCA program. QPCAs subject to the final regulations have also requested that the regulations be amended to permit them to furnish required notifications electronically, including by posting on a secure website.

The proposed regulations allow a merchant to opt out of the QPCA program by giving notice to a QPCA, however, the QPCA would be required to inform the cardholder that the payee is not a participant in the QPCA program and is nonparticipating payee. In addition, the QPCA must advise the cardholder/payor of the cardholder/payor's obligation to solicit the TIN of a nonparticipating merchant/payee to which it makes a reportable payment. The proposed regulations also provide that QPCAs may furnish the required notifications electronically, including by posting on a secure website.

2. USE OF DATA

The collection of information is required so that, for purposes of backup withholding, payors who make reportable payments through a payment card may rely on the names and TINs of payees that have been obtained and validated by a QPCA.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The proposed regulation provides that QPCAs may furnish the required notifications electronically, including by posting on a secure website. The use of electronic furnishing of notices should reduce the burden of mailing, collection and storage of notices and consents.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(D)(2)**

Not applicable.

8. **CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

A notice of proposed rulemaking with a cross-reference to temporary regulations (REG-116641-01 (NPRM)), was originally published in the Federal register (68 FR 4970), on January 31, 2003. Final regulations (TD 9136) were issued in the Federal register (69 FR 41928) on July 13, 2004. New proposed regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions were published in the Federal register (72 FR 38534), on July 13, 2007. These proposed regulations provided the public a 60-day period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing was scheduled to be held with respect to this NPRM if any person who has submitted written comments requests one.

In response to the Federal Register notice (73 FR 46360), dated August 8, 2008, we received no comments during the comment period regarding these proposed and temporary regulations.

9. **EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

10. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information contained in these proposed regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1819. The recordkeeping requirements are in section 31.3406(g)-1(f)(3) of these proposed regulations. Proposed regulation section 31.3406(g)-1(f)(3) requires that, in the case of a reportable payment, a QPCA must notify a payor on the billing information for the payment that the a merchant/payee that has opted out of the QPCA program is a nonparticipating payee. This notification alerts the payor that backup withholding may apply. It is estimated that 2,000 members or affiliates of QPCAs will provide notice on approximately 235,000,000 reportable payments. The total burden associated with this collection of information is 11,750,000 hours. With the addition of REG-163195-05, it is also estimated that the additional reporting burden to QPCAs under the proposed regulation is 62,570 hours. It is also estimated that the additional burden hours for merchant/payees to opt out of the QPCA program and to consent to the electronic receipt of notices under the proposed regulation is 12,400,000 hours. It is also estimated that the burden hours for cardholders/payors to consent to the electronic receipt of notices under the proposed regulation is 13,027,000 hours. The estimated average reporting burden is 1.91 hours. The total estimated reporting burden for this entire collection of information is 37,239,570 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated August 8, 2008, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

As a result of the additional collection activities from the proposed regulations (REG-163195-05), we are reporting a total burden increase of 25,489,570 hours.

This document is being submitted for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.