

Part III - Administrative, Procedural, and Miscellaneous

Extension and Modification of Transitional Relief Under Sections 3403, 3406, 6721, 6722, 6651, and 6656 with Respect to the Reporting of Information and Backup Withholding on Digital Assets by Brokers under Section 6045

Notice 2025-33

SECTION 1. PURPOSE

This notice extends for an additional year the transitional relief provided in sections 3.01, 3.02, and 3.06 of Notice 2024-56, 2024 29 I.R.B. 64 (July 15, 2024). Specifically, this notice provides transitional relief from penalties with respect to certain information reporting obligations under section 6045¹ and also provides transitional relief from the liability for the payment of backup withholding tax required to be withheld under section 3406 and its accompanying regulations as well as from penalties for brokers who fail to pay that tax with respect to certain sales of digital assets required to be reported under section 6045.

This notice also provides additional transitional relief from penalties to brokers with respect to sales of digital assets effected for certain customers that have not been

¹ Unless otherwise specified, all “section” references are to sections of the Internal Revenue Code, the Income Tax Regulations (26 CFR part 1), or to the Employment Taxes and Collection of Income Tax at Source Regulations (26 CFR part 31).

previously classified by the broker as U.S. persons.

SECTION 2. BACKGROUND

.01 Section 6045 and the Final Regulations

Section 6045(a) provides that every person doing business as a broker shall make a return to the Internal Revenue Service (IRS) showing the name and address of each customer, with details regarding gross proceeds and other information as required. These rules apply when required by the Secretary of the Treasury or the Secretary's delegate (Secretary) and in accordance with regulations prescribed by the Secretary. On July 9, 2024, the Department of the Treasury (Treasury Department) and the IRS published Treasury Decision 10000 in the *Federal Register* (89 FR 56480) (final regulations) to require brokers to file information returns on Form 1099-DA and furnish payee statements reporting gross proceeds for sales of digital assets effected on or after January 1, 2025 and, in certain circumstances, adjusted basis on sales of digital assets effected for customers for sales of digital assets effected on or after January 1, 2026.

Section 1.6045-1(g)(1) provides that no return of information is required with respect to a sale effected for a customer that is considered to be an exempt foreign person. Under sections 1.6045-1(g)(4)(ii)(B) and (g)(4)(vi)(A)(1), a broker effecting a sale of digital assets may treat a customer as an exempt foreign person if the broker receives valid documentation upon which it may rely for this purpose (for example, Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)).

.02 Sections 6721, 6722, and 6724

Section 6721 imposes a penalty for any failure to file an information return on or before the required filing date and for any failure to include all the information required to be shown on a return or the inclusion of incorrect information. Section 6724(d)(1)(B)(iii) defines an information return for this purpose as a return required by section 6045(a) or (d).

Section 6722 imposes a penalty for any failure to furnish a payee statement on or before the required furnishing date to the person to whom such statement is required to be furnished and for any failure to include all the information required to be shown on a payee statement or the inclusion of incorrect information. Section 6724(d)(2)(H) defines a payee statement for this purpose as a statement required by section 6045(b) or (d).

Section 6724 provides that no penalty shall be imposed under sections 6721 and 6722 if the filer (payor) shows that the failure was due to reasonable cause and was not due to willful neglect.

.03 Sections 3403 and 3406

Section 3406(a)(1) requires certain payors of reportable payments to deduct and withhold a tax, equal to the fourth lowest rate of tax applicable under section 1(c) (currently 24 percent), from that payment (backup withholding tax) if the payee fails to furnish the payee's tax identification number (TIN) to the payor in the manner required or if the IRS notifies the payor that the name and TIN combination reported by the payor to the IRS for the payee is incorrect. Under section 3406(b)(3)(C), a reportable payment includes payments made by a payor that are required to be shown on an information return filed by a broker under section 6045. Pursuant to sections 31.3406(d)-1 and 31.3406(h)-3(a)(1), a payee that is not an exempt foreign person must generally furnish

to the broker on a Form W-9, Request for Taxpayer Identification Number and Certification, the payee's TIN and certify under penalties of perjury that the furnished TIN is correct (certified TIN).

A broker required to file Form 1099-DA with respect to a payee's digital asset transaction is also required to report to the IRS the amount of backup withholding tax the broker withheld from the payee on Form 945, Annual Return of Withheld Federal Income Tax, and on Form 1099-DA. The broker must also furnish a statement with this information to the payee. The payee may then report this tax as an income tax payment on the payee's Federal income tax return.

The consequences to a broker for failing to backup withhold and pay the amount withheld to the IRS are significant. First, a broker subject to backup withholding under section 3406 is liable under section 3403 for the payment of the backup withholding tax required to be withheld. Additionally, a broker who fails to withhold and pay backup withholding tax when required may be subject to civil penalties under sections 6651 for a failure to pay and 6656 for a failure to deposit unless the failure is due to reasonable cause and not due to willful neglect.

.04 TIN Matching Program

Section 31.3406(j)-1(a) provides that the Commissioner of Internal Revenue (Commissioner) has the authority to establish TIN matching programs (IRS TIN Matching Programs) and may prescribe by revenue procedure or other guidance the scope and terms and conditions for participating in such programs. Section 31.3406(j)-1(b) provides that none of the matching details received by a payor through an IRS TIN Matching Program will constitute an IRS notification regarding incorrect name and TIN

combination for purposes of imposing backup withholding under section 3406(a)(1)(B). Section 31.3406(j)-1(d) provides that the IRS will not use a payor's decision not to participate in an IRS TIN Matching Program as a basis to assert that the payor lacks reasonable cause under section 6724(a) for failure to file a correct information return under section 6721 or to furnish a correct payee statement under section 6722.

Revenue Procedure 97-31, 1997-26 I.R.B. 6 (June 30, 1997), established procedures under which Federal agencies could submit payee names and TINs and the IRS would inform the agency whether the names and TINs matched the information in the IRS's database for the program. Revenue Procedure 2003-9, 2003-8 I.R.B. 516 (February 24, 2003), established an IRS TIN Matching Program that permits payors to verify name and TIN combinations provided by payees that are required to be reported on information returns and payee statements. To participate in this IRS TIN Matching Program, the payor must complete an application. Then, prior to filing an information return, the IRS TIN Matching Program participant may check the name and TIN combination furnished by the payee against the name and TIN combination contained in the IRS-maintained database. More information is available at <https://www.irs.gov/tax-professionals/taxpayer-identification-number-tin-matching>. See Publication 2108A, On-Line Taxpayer Identification Number (TIN) Matching Program.

.05 Notice 2024-56

Notice 2024-56 provides transitional relief for brokers who are otherwise required to file information returns under section 6045 and backup withhold under section 3406 with respect to sales of digital assets effected by the brokers for their customers. In addition to penalty relief for certain brokers that fail to file Forms 1099-DA and furnish payee

statements with respect to certain sales of digital assets, Notice 2024-56 provides temporary transitional relief from the obligation to backup withhold under section 3406 and pay such amounts to the IRS under section 3403 with respect to certain sales of digital assets. Specifically, section 3.01 of Notice 2024-56 provides that backup withholding will not be required on sales of digital assets effected by the broker on behalf of customers during calendar year 2025.

In addition, for digital asset sales effected by the broker before January 1, 2027, section 3.02 of Notice 2024-56 permits brokers to use alternative procedures to obtain TINs from customers that opened accounts with the broker prior to January 1, 2026 (preexisting customers) if the broker submits the payee's name and TIN combination to the IRS TIN Matching Program and receives a response that the name and TIN combination furnished by the payee matches the name and TIN combination for that payee in IRS records.

Additionally, for sales of digital assets in exchange for different digital assets effected on behalf of customers before January 1, 2027, section 3.06 of Notice 2024-56 limits the amount of backup withholding tax that brokers must withhold and pay as a tax to the IRS to the amount that the broker receives upon the immediate liquidation of 24 percent of the customer's received digital assets, notwithstanding that such amount may be less than the value of 24 percent of the customer's received digital assets determined at the time of the transaction giving rise to the backup withholding obligation.

Finally, section 3.06 of Notice 2024-56 also provides penalty relief from information reporting penalties and relief from penalties under sections 6651 and 6656 with respect to any decrease in the value of received digital assets between the time of the

transaction giving rise to the backup withholding obligation and the time the broker liquidates 24 percent of a customer's received digital assets.

.06 Treatment of Certain Preexisting Customers as Exempt Foreign Persons

The relief provided in section 3.02 of Notice 2024-56 applies only to customers with certified TINs, which are generally U.S. persons. To provide additional time for brokers to collect the necessary documentation to treat preexisting customers as exempt foreign persons with respect to digital asset sales effected prior to January 1, 2027, section 1.6045-1(g)(4)(vi)(F) permits a broker to treat a customer with an account established prior to January 1, 2026, as an exempt foreign person if the customer has not been previously classified as a U.S. person by the broker and the information the broker has for the customer in its files includes a residence address that is not a U.S. address.

SECTION 3. DISCUSSION

.01 Sales Effected in Calendar Year 2026

Digital asset brokers are in the process of building and implementing systems and procedures that will enable them to comply with the section 6045 information reporting obligations for digital asset sales set forth in the final regulations. These brokers are also building and implementing systems and procedures that will enable them to comply with associated backup withholding tax obligations for customers who do not supply certified TINs or otherwise do not provide documentation establishing they are exempt from backup withholding. The Treasury Department and the IRS understand that, notwithstanding the transitional relief provided in Notice 2024-56, digital asset brokers may need additional time to build and implement backup withholding systems prior to the application of the backup withholding rules for transactions on or after January 1,

2026, as required after the application of Notice 2024-56. Accordingly, the Treasury Department and the IRS are extending for one additional year the backup withholding relief provided by section 3.01 of Notice 2024-56 with respect to sales of digital assets. Therefore, backup withholding tax obligations under sections 3406 and 3403 will not be required on any digital asset sale effected by a broker during calendar year 2025 or calendar year 2026.

.02 TIN Collection for Sales Effected in Calendar Year 2027

The Treasury Department and the IRS are aware that some brokers may need additional time to obtain certified TINs from preexisting customers. Accordingly, the Treasury Department and the IRS are extending the relief provided by section 3.02 of Notice 2024-56 to permit brokers to rely on uncertified TINs of payees that are preexisting customers if the broker, prior to effecting the digital asset sale transaction for the customer, submits the payee's name and TIN combination to the IRS TIN Matching Program and receives a response that the submitted name and TIN combination matches the name and TIN combination for that payee in the IRS records. This alternative TIN collection relief is permitted for digital asset sales effected in calendar year 2027 on behalf of payees that are preexisting customers.

.03 Treatment of Certain Preexisting Customers as Exempt Foreign Persons for Sales Effected in Calendar Year 2027

The Treasury Department and the IRS are aware that some brokers may need additional time beyond that provided in section 1.6045-1(g)(4)(vi)(F) to obtain documentation necessary to treat customers with an account established prior to January 1, 2026, as exempt foreign persons. Accordingly, to provide this additional

time, the IRS will not impose penalties under sections 6721 and 6722 on brokers that fail to file information returns and furnish payee statements with respect to sales of digital assets effected during calendar year 2027 for any customer with an account established prior to January 1, 2026, if the customer has not been previously classified as a U.S. person by the broker and the information the broker has in its files for the customer includes a residence address that is not a U.S. address. Additionally, backup withholding under section 3406 will not be required on any digital asset sale effected by brokers during calendar year 2027 for these customers. Finally, the IRS will not impose penalties on brokers that would otherwise be required to file Form 945 with respect to the backup withholding tax due with respect to digital asset sales effected during calendar year 2027 for these customers.

.04 Amount of Backup Withholding for Sales Effected in Calendar Year 2027

In the case of a sale of a digital asset for different digital assets other than specified nonfungible tokens (specified NFTs), as defined in section 1.6045-1(d)(10)(iv)(A) through (C), brokers may need additional time to implement new backup withholding procedures because the value of the digital assets received in such sales can change between the time of the transaction and the time the received digital assets are liquidated into U.S. dollars for depositing with the IRS. Accordingly, to provide brokers additional time to develop appropriate procedures, the Treasury Department and the IRS are extending the relief provided by section 3.06 of Notice 2024-56 to limit the amount that the broker must pay as backup withholding tax for reportable digital asset sales effected in calendar year 2027 to the amount that the broker receives upon the immediate liquidation of 24 percent of the customer's received digital assets,

notwithstanding that such amount may be less than 24 percent of customer's received digital assets at the time of the transaction giving rise to the backup withholding obligation. This relief also includes the penalty relief from information reporting penalties and relief from penalties under sections 6651 and 6656 with respect to any decrease in the value of received digital assets between the time of the transaction giving rise to the backup withholding obligation and the time the broker liquidates 24 percent of a customer's received digital assets. Finally, the IRS will not impose penalties on brokers that are required to file Form 945 with respect to the backup withholding tax due as described in this section 3.04 with respect to digital asset sales, provided the broker pays and reports the amount of backup withholding tax that is withheld and deposited with the IRS in accordance with this section 3.04.

SECTION 4. EFFECTIVE DATE

This notice is effective for digital asset sales effected on or after January 1, 2025.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2024-56 is modified.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, please call (202) 317-5436 (not a toll-free number).