

Part III. Administrative, Procedural, and Miscellaneous

Qualified Payment Card Agent Determination

Rev. Proc. 2004-42

SECTION 1. PURPOSE

This revenue procedure establishes a procedure for a payment card organization to request a determination that it is a Qualified Payment Card Agent (QPCA) for purposes of section 3406 and section 6724 of the Internal Revenue Code. A QPCA may act on behalf of cardholder/payors in soliciting, collecting, and validating merchants' names, taxpayer identification numbers (TINs) and corporate status (collectively referred to as merchant/payee data) and on behalf of merchant/payees in furnishing merchant/payee data to cardholder/payors. The Regulations on Procedure and Administration relieve cardholder/payors from certain TIN solicitation requirements for payments made through a QPCA. The Employment Tax Regulations provide a limited exception from the backup withholding requirements for payments made to certain merchant/payees through a QPCA.

SECTION 2 . BACKGROUND

.01 Payment card transactions. A payment card transaction is a transaction in which a cardholder/payor uses a payment card (as defined in section 4.04 of this revenue procedure) to purchase goods or services and a merchant agrees to accept the payment card as a means of obtaining payment. A payment card organization (as defined in section 4.05 of this revenue procedure) sets the standards and provides the mechanism for effecting the payment.

.02 Reporting requirements. In general, section 6041 requires a person engaged in a trade or business and making a payment in the course of the trade or business of \$600 or more during a calendar year of fixed or determinable income to file an information return with the Internal Revenue Service (IRS) and to furnish an information statement to the payee. Section 1.6041-3(p) of the Income Tax Regulations provides exceptions to these requirements, including, for example, exceptions for payments made to a payee that is a corporation.

Section 6109(a)(2) provides that any payee, with respect to whom a return is required to be made by another person or whose identifying number is required to be shown on a return of another person, must furnish to the other person the identifying number prescribed for securing the proper identification of the payee. Section 6109(a)(3) provides that any person required to make a return with respect to a payee

must ask the payee for the identifying number prescribed for securing the proper identification of the payee and must include that number in the return.

.03 Backup withholding. Section 3406(a)(1) requires a payor to withhold on reportable payments (as defined in section 3406(b)(1)) if the payee does not provide a TIN to the payor in the manner required or if the Secretary notifies the payor that the TIN furnished by the payee is incorrect or in certain other circumstances. 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. Under the regulations, a payor or a payor's authorized agent may participate in a TIN matching program that permits the payor or authorized agent to contact the IRS with respect to the TIN furnished by a payee before the payor files an information return for reportable payments to the payee. The regulations further provide that the IRS will inform the payor or the payor's authorized agent whether or not the name/TIN combination furnished by the payee matches a name/TIN combination maintained for the TIN matching program. Revenue Procedure 2003-9, 2003-1 C.B. 516, describes the procedures for participation in the IRS TIN Matching Program.

Section 31.3406(g)-1(f) of the Employment Tax Regulations provides that the backup withholding requirements of section 3406 do not apply to payments made through a QPCA if the payments are made to a qualified payee or during a grace period. Section 31.3406(g)-1(f)(3) requires a QPCA to notify the cardholder/payor when payments are made to a merchant/payee who is not a qualified payee.

.04 Information reporting penalties and waivers for reasonable cause. Section 6721 provides that a payor may be subject to a penalty for failure to file a complete and correct information return. Section 6722 provides that a payor may be subject to a penalty for failure to furnish a complete and correct information statement to a payee. A failure subject to the section 6721 and section 6722 penalties includes a failure to include correct payee TINs.

Section 6724 provides that the penalties under section 6721 and section 6722 may be waived if the filer shows that the failure was due to reasonable cause and was not due to willful neglect. Section 301.6724-1(e)(1)(vi)(H) and (f)(5)(vii) of the Regulations on Procedure and Administration provide that a cardholder/payor in a payment card transaction may establish reasonable cause based on its reliance on a QPCA.

SECTION 3. SCOPE

This revenue procedure applies to payment card organizations acting or seeking to act on behalf of cardholder/payors in soliciting, collecting, and validating merchant/payee data and on behalf of merchant/payees in furnishing merchant/payee data to cardholder/payors.

SECTION 4. DEFINITIONS AND RELATED RULES

The following definitions and related rules apply solely for purposes of this revenue procedure:

.01 Cardholder. A cardholder (or cardholder/payor) is the person that agrees to make the payment through the payment card organization. Thus, in the case of a payment card issued to an employee of a person that agrees to make payments through the payment card organization, the employer rather than the employee is the cardholder/payor.

.02 Merchant. A merchant (or merchant/payee) is a person that has agreed to accept the payment card issued by the payment card organization as payment for goods and services.

.03 Merchant/payee data. Merchant/payee data includes the merchant/payee's name, corporate status, and TIN, and whether the TIN has been validated through participation in the IRS TIN Matching Program.

.04 Payment card. A payment card is a card (or an account) issued by a payment card organization to a cardholder/payor which, upon presentation to a merchant/payee, represents an agreement of the cardholder to pay the merchant through the payment card organization.

.05 Payment card organization. A payment card organization is an entity that sets the standards and provides the mechanism for effectuating payment between a purchaser and a merchant in a payment card transaction. A payment card organization generally provides this payment mechanism by issuing payment cards, enrolling merchants as authorized acceptors of payment cards for payment for goods or services, and ensuring the system conducts the transactions in accordance with prescribed standards. In any case in which a payment card organization acts through a member,

affiliate, or licensee, the action is treated for purposes of this revenue procedure (including this definition) as an action by a payment card organization.

.06 Qualified Payment Card Agent (QPCA). A QPCA is a payment card organization that has a current QPCA determination from the IRS. A person acting in its capacity as a QPCA does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

SECTION 5. APPLICATION AND REQUIREMENTS FOR QPCA DETERMINATION

.01 Where to apply for QPCA determination. A person authorized to act on behalf of a payment card organization may submit a written request for a QPCA determination to the following address:

Internal Revenue Service
1601 Market Street
20th Floor
ATTN: TIN Matching Coordinator
S:C:CP:F&CC:SCDM
Philadelphia, PA 19107

.02 Content of QPCA application. A payment card organization requesting a QPCA determination must include the following in its application:

(1) The name, address, and employer identification number of the payment card organization and a description of its business.

(2) The name of the department or office of the payment card organization that will serve as the information contact.

(3) The name of the department or the names and titles of the officers or employees that will be responsible for the performance of the TIN solicitation activities described in section 6.

(4) A list of the systems, business lines, or card product lines or levels that will be covered by the TIN solicitation activities described in section 6 and that will be covered by a QPCA determination.

(5) An explanation of the account opening procedures and documents the payment card organization uses, or requires its members, affiliates, or licensees to use, to establish merchant account relationships related to the payment card organization's activities as a QPCA.

(6) The approximate number and the type of merchants (individuals, corporations, etc.) enrolled by the payment card organization.

(7) An explanation of the payment card organization's systems and controls related to the payment card organization's activities as a QPCA for--

(a) Obtaining merchant/payee data (including merchant/payee data provided by reputable third-party sources);

(b) Validating the accuracy of the merchant/payee data;

(c) Ensuring the accuracy and reliability of the merchant/payee data;

- (d) Maintaining the merchant/payee data; and
- (e) Supplying the merchant/payee data to the cardholder/payor.

.03 Requirements for QPCA determination. A payment card organization must meet the following requirements to obtain a QPCA determination:

(1) Authorization to act on behalf of cardholder/payors and on behalf of merchant/payees.

(a) The payment card organization must establish that cardholder/payors have authorized it or its members, affiliates, or licensees to act on their behalf in soliciting, collecting, and validating merchants' names and TINs and to assist the cardholders in meeting their information reporting obligations under section 6041 and section 6041A. The payment card organization must also establish that merchant/payees have authorized it or its members, affiliates, or licensees to act on their behalf in furnishing their names and TINs to cardholders and to assist the merchants in meeting their obligations under section 6109(a)(2). To satisfy these requirements, the payment card organization must provide the written notice described in section 5.03(1)(b) to each cardholder/payor and must provide the written notice described in section 5.03(1)(c) to each merchant/payee.

(b) The text of the written notice provided to cardholder/payors must be in bold and conspicuous type, and the notice must include the legend: "Important Tax and Privacy Materials." The notice must state:

As a cardholder, you may engage in transactions with merchants for which you may be required to file an information return with the Internal Revenue Service. If you are required to file an information return with the Internal Revenue Service reporting a transaction, you must include the amount of the payment, the merchant's name, and the merchant's taxpayer identification number. To assist you in fulfilling these potential information reporting requirements, [insert name of payment card organization] has received [is seeking] approval from the Internal Revenue Service to act on your behalf, and on behalf of merchants, to solicit, furnish, and validate the merchants' taxpayer identification numbers. A merchant's taxpayer identification number and other merchant data may be provided to you through [insert name of issuer]. If you accept the merchant data service, please be advised that you must maintain the confidentiality of the merchant data provided to you and that you may use it only for purposes of backup withholding and filing information returns with the Internal Revenue Service.

You may decline this service. If you do not want [insert name of card organization] to provide this service to you, you must complete

the enclosed form and return it to [insert name of issuer] in the enclosed envelope.

For more information, contact [insert contact name and phone number.]

The notice may be included in the annual (or periodic) agreement, or amendments thereto, between the payment card organization and the cardholder or in a separate document. The outside of the envelope in which the written notice is mailed must contain, in bold and conspicuous type, the legend: "Important Tax and Privacy Materials Enclosed."

- (c) The text of the written notice provided to merchant/payees must be in bold and conspicuous type, and the notice must include the legend: "Important Tax and Privacy Materials." The notice must state:

As a merchant, you may engage in transactions with cardholders for which cardholders may be required to file an information return with the Internal Revenue Service. If a cardholder is required to file an information return reporting a transaction with you to the Internal Revenue Service, the cardholder must include the amount of the payment, your name, and your taxpayer identification number. To facilitate the exchange of information between you and cardholders, [insert name of payment card organization] has received [is seeking] approval from the Internal Revenue Service to act on your behalf, and on behalf of cardholders, to solicit, furnish, and validate your taxpayer identification number.

If you accept this service, your name and your taxpayer identification number will be submitted to the Internal Revenue Service for validation against the Internal Revenue Service taxpayer identification number database, and your name, taxpayer identification number, and corporate status may be provided to cardholders. Please be advised that if you accept this service, [insert name of payment card organization] may request that you provide your taxpayer identification number to it or may seek to obtain your taxpayer identification number from a reputable third-party source.

Please be aware that [insert name of payment card organization] has advised cardholders who may receive you name and taxpayer identification number that they must maintain the confidentiality of your information and may use it only for purposes of backup withholding and filing information returns with the Internal Revenue Service.

You may decline this service. If you do not want [insert name of payment card organization] to validate your name and taxpayer information number or to provide your name, taxpayer information number, and corporate status to cardholders, you should discontinue accepting the [insert name of payment card] as a means of obtaining payment. If you continue to accept the [insert name of payment card] as a means for obtaining payment after [insert 60 days after date of notice] you will be deemed to have agreed to this sharing of information.

For more information, contact [insert contact name and phone number.]

The notice may be included in the annual (or periodic) agreement, or amendments thereto, between the payment card organization and the merchant or in a separate document. The outside of the envelope in which the written notice is mailed must contain, in bold and conspicuous type, the legend: "Important Tax and Privacy Materials Enclosed."

(2) TIN solicitation activities. The payment card organization must establish that it has undertaken, or demonstrate that it will undertake, the TIN solicitation activities described in section 6.

(3) Reliability of merchant/payee data. After obtaining the authorizations required by section 5.03(1), the payment card organization must participate in the IRS TIN Matching Program and must demonstrate, based on the TIN matching results, that its merchant/payee data is sufficiently reliable.

SECTION 6. TIN SOLICITATION ACTIVITIES

.01 TIN solicitation methods. A QPCA must solicit merchant/payee TINs in a manner described in section 301.6724-1(e)(1)(i) of the Regulations on Procedure and Administration. Alternatively, a QPCA may obtain merchant/payee TINs from a reputable third-party source.

.02 Notification and disclosure requirements. A QPCA must give each merchant/payee for which it acts as agent the written notice described in section 5.03(1)(c) and must give each cardholder/payor for which it acts as agent the written notice described in 5.03(1)(b). In addition, a QPCA must give written notice of its status as a QPCA, and of any change in that status, to any member, affiliate, or licensee that issues payment cards, as well as to the merchant/payees and cardholder/payors for which it acts as agent.

.03 TIN Matching participation. A QPCA must participate in the IRS TIN Matching Program and must match its merchant/payee data relating to reportable payments with IRS within three months after obtaining the merchant/payee's TIN. A QPCA may seek to cure merchant/payee data that has not previously been validated through the IRS TIN Matching Program. The QPCA must transmit only merchant/payee data that has not previously been validated through IRS TIN Matching.

.04 Providing merchant/payee data to cardholders. The QPCA must provide cardholder/payors with a report containing merchant/payee data within four months of the date on which the QPCA makes the payment. The report may be provided in a quarterly or other regular report of merchant/payee data that includes the merchant/payee's name, corporate status, TIN, and whether the TIN has been validated through participation in the IRS TIN Matching Program. A QPCA must furnish the report containing merchant/payee data for transactions occurring on or before December 31 of the calendar year no later than January 15 of the following calendar year.

SECTION 7. OTHER REQUIREMENTS

.01 Availability of records. A payment card organization and its members, affiliates, and licensees must respond to any reasonable IRS request for inspection of any books and records that relate to the operation of TIN solicitation activity, including, but not limited to, reports, memoranda, budgets, and computer printouts. The payment card organization and its members, affiliates, and licensees must allow the IRS reasonable access to the merchant/payee TIN data system, including instruction manuals describing the system.

.02 Change in information. The QPCA must promptly notify the IRS of any change in the information described in section 5.

.03 Confidentiality of information. For purposes of this revenue procedure, the payment card organization and its members, affiliates, and licensees must maintain the confidentiality of information obtained through the TIN solicitation activities in accordance with the requirements of section 31.3406(f)-1 of the Employment Tax Regulations. Except as permitted under section 31.3406(f)-1, the payment card organization and its members, affiliates, and licensees may not disclose any merchant/payee information to any person other than the cardholder/payor without prior written consent of the merchant/payee. The IRS will treat all information provided by a QPCA as return information that is confidential under section 6103.

SECTION 8. TERM, RENEWALS, AND TERMINATION

.01 Term and renewal. In general, a QPCA determination will be effective for five years from the date of the determination. A QPCA may request a renewal of the QPCA determination by submitting an application for renewal to the IRS no earlier than 12 months and no later than three months before the expiration of the five-year term. In the application for renewal, the QPCA must report any change in the information in the original application. Before renewal of the determination, the IRS may review the QPCA's systems. In addition, the QPCA must demonstrate that the merchant/payee data continues to be reliable. The application for renewal must include the results from participation in the IRS TIN Matching Program during the current five-year term. The IRS will make every effort to issue a decision on a renewal application at least 30 days before the expiration of the current five-year term. In the event that the IRS does not issue a decision on a timely renewal application before the expiration of the existing QPCA determination, the determination will remain in effect until the IRS issues a decision on the renewal application.

.02 Revocation of determination. The IRS may revoke a QPCA determination before the expiration of its five-year term if the IRS determines, based on the results of the QPCA's participation in the IRS TIN Matching Program, that the merchant/payee data is not reliable or if the payment card organization fails to meet any of the requirements in section 5, 6, or 7. A QPCA may terminate its status as a QPCA upon 60 days written notice to the IRS.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective July 14, 2004.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Donna Welch of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Ms. Welch at (202) 622-4910 (not a toll-free call).