

Part IV - Items of General Interest

The Internal Revenue Service Will Permit Electronic Submission of Forms W-9 by Certain Intermediaries.

Announcement 2001 – 91

Background

In Announcement 98-27, 1998-1 C.B. 865, the Internal Revenue Service (the “Service”) announced that it will allow payers to establish a system to electronically receive Form W-9, “Request for Taxpayer Identification Number and Certification” from payees. The “Instructions for the Requester of Form W-9” were revised to describe a proper electronic system.

The Service will also allow a payer with an electronic system to electronically receive a Form W-9 from an investment advisor or introducing broker authorized to transmit that form as the payee’s agent. To receive a Form W-9 from an investment advisor or introducing broker, a payer’s electronic system must meet the requirements described below. The Service will revise the instructions to Form W-9 to reflect the provisions of this announcement.

Definitions

For purposes of this announcement, the term “payer” means a person required to file an information return for payments described in §§ 3406(b)(2) and (3) of the Internal Revenue Code. The term “payee” means the person required to submit Form W-9 to the payer. The term “investment advisor” means a corporation, partnership or individual registered with the Securities and Exchange Commission (“SEC”) under the Investment Advisers Act of 1940. The term “introducing broker” means a broker-dealer that is regulated by the SEC and the National Association of Securities Dealers, Inc., and that is not a payer.

Reliance

A payer receiving a Form W-9 from an investment advisor or introducing broker authorized to transmit the Form W-9 to the payer may rely on it as if the form had been received directly from the payee, for purposes of filing information returns and determining the payer's backup withholding obligations under § 3406. The advisor or broker must represent in writing (which may include electronic means) to the payer that the payee authorized the advisor or broker to transmit the Form W-9 to the payer.

The Form W-9 received from the investment advisor or introducing broker may be either the original paper Form W-9 or an electronic version (including a facsimile). An electronic version must be received by the payer through a system that meets the requirements described below. This announcement does not apply to situations in which a broker acts as a payee's agent with respect to "readily tradable instruments" pursuant to the special rule in § 31.3406(h)-3(d) of the Employment Tax Regulations. Therefore, in the case of readily tradable instruments, the payer may rely on a taxpayer identification number provided by the broker (including by electronic means) unless certification is required and the broker notifies the payer that the number was not certified.

Electronic System Requirements

- (1) In general. The electronic system must ensure that the information received by the payer is the information sent by the investment advisor or introducing broker. The system must document all occasions of user access that result in the submission. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and submitting the Form W-9 is the investment advisor or introducing broker.
- (2) Same information as paper Form W-9. The electronic submission must provide the payer with exactly the same information as the paper Form W-9.
- (3) Signature requirements and perjury statement. The electronic

submission must be signed with the payee's electronic signature, but only in situations where Form W-9 and its instructions require a signature by the payee.

(A) Electronic signature. In addition to identifying the payee to whom the Form W-9 relates, the electronic signature must authenticate and verify the submission. For this purpose, the terms "authenticate" and "verify" have the same meanings as they do when applied to a written signature on a paper Form W-9. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the submission.

(B) Perjury statement. The electronic signature on Form W-9 must be under penalties of perjury. The perjury statement must contain the language that appears on the paper Form W-9. The electronic system must inform the payee that, by signing, the payee makes the declaration contained in the perjury statement. The perjury statement must immediately precede the electronic signature.

(4) Copies of electronic Forms W-9. Upon request by the Service, the payer must supply a hard copy of the electronic Form W-9 and a statement that, to the best of the payer's knowledge, the electronic Form W-9 was submitted by the investment advisor or introducing broker acting as the payee's agent. The hard copy of the electronic Form W-9 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-9.

(5) Effective date. This announcement applies to Forms W-9 submitted to payers by payees through investment advisors or introducing brokers on or after September 4, 2001.

For further information regarding this announcement, contact Nathan Rosen of the Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division, at (202) 622-4910 (not a toll-free call).