



# Backup Withholding Due to Missing Payee TIN

This publication explains how backup withholding applies when payees don't provide their Taxpayer Identification Number (TIN) to you.

Different rules apply to backup withholding that is required because the IRS notifies you that the payee furnished an incorrect TIN or didn't report all their dividend and/or interest income.



## Questions & Answers



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### Q: What is backup withholding due to a missing payee TIN?

**A:** If you are a business or other entity, Internal Revenue Code (IRC) section 3406(a)(1)(A) requires you to deduct backup withholding from payments if the payee didn't provide a TIN to you, or provided an obviously incorrect TIN. A TIN is obviously incorrect if it contains more than 9 numbers, fewer than 9 numbers, or contains characters other than numbers. Backup withholding is a tax – not a penalty. For reportable payments after 2017, the backup withholding rate is 24%.

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### Q: What kinds of payments are subject to backup withholding due to a missing payee TIN?

**A:** Payments listed in IRC section 3406 are subject to backup withholding. These include most of the payments reported or reportable to the IRS on the following non-wage information returns:

1. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions.
2. Form 1099-DA, Digital Asset Proceeds from Broker Transactions. For more information on the Form 1099-DA, go to [IRS.gov/Form1099DA](https://www.irs.gov/Form1099DA).
3. Form 1099-DIV, Dividends and Distributions.
4. Form 1099-G, Certain Government Payments, including only payments reported in Box 5, RTAA Payments, Box 6, Taxable Grants, and Box 7, Agriculture Payments.
5. Form 1099-INT, Interest Income.
6. Form 1099-K, Payment Card and Third Party Network Transactions.
7. Form 1099-MISC, Miscellaneous Income, including royalties, fishing boat operations, and certain payments of \$600 or more in trade or business such as rents, commissions, and gross proceeds paid to attorneys.
8. Form 1099-NEC, Nonemployee Compensation, including payments of \$600 or more for services or attorney's fees.
9. Form 1099-PATR, Taxable Distributions Received From Cooperatives, to the extent payments are in cash or qualified check.
10. Form 1099-OID, Original Issue Discount, if there is a payment in cash.
11. Form W-2G, Certain Gambling Winnings, unless subject to regular gambling withholding.

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### Q: Can a payment be exempt from backup withholding?

**A:** Some payments are exempt from backup withholding. Exempt payments include but are not limited to unemployment compensation, state or local income tax refunds, distributions from an IRA, pension, annuity, profit-sharing or stock plan, distributions from a medical or health savings account, and long term care benefits.

For more information on exempt payments see the Instructions for the Requester of Form W-9 and Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s).

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### Q: Can a payee be exempt from backup withholding?

**A:** Yes. Payees who may be exempt are listed in the Instructions for the Requester of Form W-9 and Publication 1281. They include tax-exempt organizations, government agencies, corporations (for certain payments), and other listed entities. In some cases you may treat a payee as exempt based on its name; otherwise, the payee must certify that it is exempt on Form W-9, Request for Taxpayer Identification Number and Certification.

For example, you may treat a payee as a corporation if its name includes "Corp" or "Inc". A payee may not be treated as a corporation or exempt merely because the business name contains the word "Company", "Co", "Limited Liability Company", or "LLC".

Payments that you make to corporations for attorney's fees, gross proceeds paid to attorneys, or medical services are not exempt from backup withholding.

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### Q: When does a payee become subject to backup withholding due to a missing TIN?

**A:** You must deduct backup withholding at the time you make a reportable payment to the payee or to the payee's account, if you do not possess the payee's TIN at the time the reportable payment is made to the payee.

**6****Q: When are reportable payments considered made?**

- A:** Amounts are considered paid when they are made available to the payee or credited to the payee's account.

**7****Q: How does a payer report and deposit backup withholding?**

- A:** Report backup withholding on Form 945, Annual Return of Withheld Federal Income Tax. For more information, including the deposit requirements for Form 945, see the instructions for Form 945, or Publication 15, (Circular E), Employer's Tax Guide.

**8****Q: I received Letter 6112-A from the IRS. What should I do?**

- A:** Letter 6112, Form 945 Non-File Request for Return, explains that you did not file Form 945 for backup withholding related to missing payee TIN(s). This doesn't mean you're being audited, but instead that there's a discrepancy that needs to be resolved between the information shown on your filed Forms 1099 or W-2G and the fact that you did not file Form 945.

Respond to Letter 6112 by providing a signed Form 945 for the amount of backup withholding shown on the enclosed list of payees, or send us a signed statement explaining why you believe you're not required to file. You can send us any supporting documentation you'd like us to consider. For example, if applicable you can provide the payee TIN(s) and a signed written statement that you had the payee TIN(s) at the time you paid the payee(s). If you send documents you'd like us to consider, send photocopies – not original documents.

We send Letter 6112-A, Form 945 Non-File Proposed Return, if we didn't hear from you after sending Letter 6112, or couldn't resolve the issue with the information you gave us. Letter 6112-A explains the proposed changes, and what to do if you agree or don't agree.

If you agree, sign the enclosed Form 945 and mail or fax it to the address or fax number listed on the letter. Deposit any tax you owe on Form 945 with the Electronic Federal Tax Payment System tax payment service at [www.eftps.gov](http://www.eftps.gov). If you pay the amount due now, you will reduce the amount of

interest and penalties. If you don't agree, send us a signed statement explaining why you believe you're not required to file.

Mail or fax your response to the address or fax number listed on the letters. Include your name, employer identification number (EIN), and Tax Year on each page. Be sure to send your reply to us by the response due date on the letters. If you can't meet the deadline, call the number on the letters to ask for additional time.

We'll review the information you sent. If we accept your explanation, we'll send you a letter confirming the issue is resolved. If your explanation resolves some but not all of the discrepancies, we'll send you a revised proposed tax calculation. Review the revised calculation to determine if you agree or disagree. If we're not able to accept your explanation, or if we don't hear from you by the due date, we'll file a Form 945 on your behalf for the tax due.

For more information on backup withholding for missing recipient TIN, see Publication 1281. For more information on Appeals rights, see Publication 5, Your Appeals Rights and How to Prepare a Protest If You Don't Agree.

**9****Q: What should I do to resolve the discrepancy if I filed Form 945 and/or deposited tax under another payer's EIN?**

- A:** Information returns and Form 945 must be filed with the same payer's EIN. This is required even for third parties such as accountants or agents filing on behalf of another payer. If you filed Form 945 to report or deposit backup withholding under another payer's EIN, provide a signed written response that includes the other payer's name and EIN, and the total amount of backup withholding tax reported on your behalf on the Form 945 filed by the other payer.

**10****Q: Is the Letter 6112 and 6112-A compliance process an examination?**

- A:** No. Letters 6112 and 6112-A do not request any books or records, do not comprise an inspection under IRC 7605(b), and are not an audit under Section 530 of the Revenue Act of 1978.

**11****Q: How are penalties and interest handled during the Letter 6112 and 6112-A compliance process?**

- A:** Penalties and interest are automatically calculated through electronic means. If penalties are assessed you can request a penalty removal or reduction. See Notice 746, Information About Your Notice, Penalty and Interest.

**12****Q: I didn't have the payee's TIN when I paid the payee. Can I avoid liability for backup withholding if I obtain the payee's TIN now and provide it to the IRS?**

- A:** If you fail to deduct required backup withholding tax from a payee, you may be entitled to relief under IRC section 3402(d) if you can show that the payee reported the payments and paid the tax. Use Form 4669, Statement of Payments Received, to show that you are entitled to such relief. Use Form 4670, Request for Relief of Payment of Certain Withholding Taxes, to submit Forms 4669 to us. Provide these forms with your signed Form 945 for the amount of tax shown on the list of payees enclosed with Letter 6112-A. If you paid the tax due, you will also need to provide a signed Form 945-X, Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund, that reflects the requested backup withholding abatement on Forms 4669. Section 3402(d) provides relief from tax only – not penalties or interest.

**13****Q: What should I do if I have no record or account for a payee or payments attached to Letter 6112 and 6112-A?**

- A:** If you have no record of the payee or payments enclosed with Letter 6112 and 6112-A, send us this information in a signed written statement by the response due date shown on the letters. We will review our records to determine if identity theft or a reporting error has occurred.

**14****Q: Where can I find the forms, instructions, notices, and publications mentioned in this document?**

- A:** Visit [IRS.gov/forms-instructions](http://IRS.gov/forms-instructions) or call 800-TAX-FORM (800-829-3676).