

New Backup Withholding Rate

Cross References

- IR-2018-205

IRS Pub. 1281, *Backup Withholding for Missing and Incorrect Name/TIN(s)*, is now available on www.irs.gov. It has been updated to reflect a key change made by the Tax Cuts and Jobs Act (TCJA). As a result of this change, effective January 1, 2018, the backup withholding tax rate dropped from 28% to 24%.

In general, backup withholding applies in various situations including, but not limited to, when a taxpayer fails to supply their correct Taxpayer Identification Number (TIN) to a payer. Usually, a TIN is a Social Security Number (SSN), but in some instances, it can be an Employer Identification Number (EIN), Individual Taxpayer Identification Number (ITIN) or Adoption Taxpayer Identification Number (ATIN). Backup withholding also applies, following notification by the IRS, where a taxpayer underreported interest or dividend income on their federal income tax return.

IRS Pub. 1281 contains information designed to help any payer required to impose backup withholding on any of their payees. Among other things, the publication features answers to 34 frequently asked questions (FAQs). One of them, FAQ 34, points out that a payer who mistakenly backup withheld at an incorrect rate (such as the old 28% tax rate, rather than the new 24% rate), need not refund the difference to the payee. However, a payer who chooses to refund the difference must do so before the end of the year and can then make appropriate adjustments to their federal tax deposits.

When backup withholding applies, payers must backup withhold tax from payments not otherwise subject to withholding. Payees may be subject to backup withholding if they:

- Fail to give a TIN,
- Give an incorrect TIN,
- Supply a TIN in an improper manner,
- Underreport interest or dividends on their income tax return, or
- Fail to certify that they're not subject to backup withholding for underreporting of interest and dividends.

Backup withholding can apply to most kinds of payments reported on Form 1099, including:

- Interest payments,
- Dividends,
- Patronage dividends, but only if at least half of the payment is in money,
- Rents, profits or other income,
- Commissions, fees or other payments for work performed as an independent contractor,
- Payments by brokers and barter exchange transactions,
- Payments by fishing boat operators, but only the portion that's in money and represents a share of the proceeds of the catch,

- Payment card and third-party network transactions, and
- Royalty payments.

Backup withholding also may apply to gambling winnings that aren't subject to regular gambling withholding.

To stop backup withholding, the payee must correct any issues that caused it. They may need to give the correct TIN to the payer, resolve the underreported income and pay the amount owed, or file a missing return.

Payers report any backup withholding on Form 945, *Annual Return of Withheld Federal Income Tax*. The 2018 form is due January 31, 2019. For more information about depositing backup withholding taxes, see Publication 15, *Employer's Tax Guide*. Payers also show any backup withholding on information returns that they furnish to their payees and file with the IRS.