



MEMORANDUM

TO: The Committee of Annuity Insurers
FROM: Mark E. Griffin
CC: Information Reporting and Withholding Working Group, Bryan W. Keene
DATE: October 18, 2024
RE: Final regulations on withholding under section 3405(e)(13)

Today the Treasury Department and IRS released final regulations under section 3405(e)(13) addressing the treatment of certain designated distribution as deliverable outside of the United States. These regulations affect a payor's obligation to withhold income taxes from such distributions under section 3405(a) and (b), and a payee's ability to elect not to have withholding apply with respect to these distributions under those sections. The final regulations apply to payments and distributions made on or after January 1, 2026, although taxpayers may apply the final rules to earlier payments and distributions. The final regulations are attached and linked [here](#).

The final regulations adopt proposed regulations published on May 31, 2019, with no modifications except for the change in the applicability date and other minor changes in wording that are nonsubstantive. Our report on the proposed regulations, including background on the relevant withholding rules, can be found [here](#).

The following summarizes the situations addressed in the final regulations.

1. ***Payee with a military or diplomatic Post Office address.*** Designated distributions to United States military and diplomatic personnel or their families are not treated as delivered outside of the United States solely because those payments or distributions are to be delivered to an Army Post Office associated with Army or Air Force installations, a Fleet Post Office associated with Navy installations and ships, or a Diplomatic Post Office providing global mail service to authorized personnel assigned to designated posts abroad. Consequently, the payor is not required to withhold tax under section 3405(a) or (b) if the payee makes a valid election out of withholding and provides the payor with information listing one of these types of addresses as his or her residence.
2. ***Payees with a residence address located within the United States.*** If a payee provides a residence address located within the United States and also provides payment instructions indicating that the funds are to be delivered outside of the United States (including instructions that direct funds delivered in the United States to be forwarded out of the country or that have certain international references, such as to an International Automated Clearing

House Transaction), any election out of withholding is invalid and the payor must withhold tax from the designated distribution under section 3405(a) or (b), as applicable.

3. ***Payees with a residence address located outside of the United States and payees who have not provided a residence address.*** A payor must withhold tax pursuant to section 3405(a) or (b) if the payee provides a non-U.S. residence address or fails to provide a residence address at all (including if the payee provides an address for a nominee, trustee, or agent but fails to provide the payee's own residence address), even if the designated distribution is actually paid to a U.S. financial institution or other U.S. person.
4. ***Payments subject to withholding under section 1441, etc.*** In accordance with section 3405(e)(1)(B)(iii), a designated distribution does not include a distribution that is subject to withholding under subchapter A of chapter 3 (relating to nonresident aliens and foreign corporations) or that would be subject withholding under that subchapter but for a tax treaty. Thus, the withholding rules under section 1441, rather than the withholding rules under section 3405(a) and (b), apply to such a distribution. This includes the presumption rules in the section 1441 regulations that determine a payee's status as a U.S. or foreign person in the absence of documentation.

Please let us know if you have any questions.