



## Information Reporting & Withholding

**Expiring Withholding Certificates**



## Who is Impacted

Any payors and withholding agents that make payments of U.S. source fixed, determinable annual, or periodical income and collect withholding certificates will be interested in tips to consider ahead of December 31, 2019, when some of those withholding certificates may expire.

**What changed** This is the season for resolicitation. Every year at this time payors and withholding agents take a look at their population of withholding certificates to identify whether any will expire on December 31. Since this process takes a bit of time and possibly several rounds of correspondence to request updated versions of these forms, the time to start the resolicitation process is now. This article provides a quick refresher on the withholding certificate expiration rules, a few tips for requesting updated forms before the end of the year, and what to do when December 31 arrives, but the updated form has not.

## Withholding Certificate Expiration Rules

As most in this amazing information reporting world may know, withholding certificates do not always last indefinitely. Here is a quick summary of our usual forms:

- *Form W-9, Request for Taxpayer Identification Number and Certification.*

Although these forms generally remain valid indefinitely, it is important to review files for any changes in circumstances that could impact its reliability. Identification of such changes should be part of your everyday processes and a yearend review is always a good idea. The changes to look for include updates to names or taxpayer identification numbers (TINs). Do not forget to link your 'B' Notice process and any notifications you receive from the Internal Revenue Service (IRS) to identify any name/TIN combinations that require an update or even a new Form W-9. See our last article on ['B' Notices](#) for additional details.

- *Form W-8BEN, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*
- *Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*
- *Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*
- *Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States*



Generally, all of the above Forms W-8BEN, BEN-E, EXP, and ECI, are valid from the signature date on the form until December 31 of the third succeeding calendar year, unless there is a change in circumstances which would cause any information on the form to be incorrect. On Forms W-8BEN-E, ECI, and EXP, a change in circumstance could be related to a chapter 4 status. If the payor or withholding agent knows or has reasons to know that the status changed, for example, a Foreign Financial Institution (FFI) is no longer on the IRS FFI list, then the form will expire and is no longer reliable.

Although there are certain conditions where Forms W-8 might be valid indefinitely unless there has been a change in circumstances, it is not recommended to utilize this rule, because it allows too much room for error.

- *Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.*

Although these forms generally remain valid indefinitely, it is important to review files for any changes in circumstances that could impact its reliability. This indefinite validity period does not extend to any other withholding certificates, documentary evidence, or withholding statements associated with the Form W-8IMY. This rule applies also to Qualified Derivatives Dealers providing a Form W-8IMY that includes the attachment for claiming treaty benefits (if applicable), which will be treated as a beneficial owner withholding certificate and not valid indefinitely.

**Note:** For all withholding certificates, if the payor or withholding agent knows or has reason to know of a change in circumstances that makes any information on the current form unreliable or incorrect for purposes of chapter 3 or 4 (to the extent applicable) based on the claims made on the form, then the form expires and is no longer reliable.

#### Tips for Requesting Updated Withholding Certificates

Around this time of year, most payors and withholding agents begin resoliciting expiring withholding certificates. It is also prudent to take a look at any potential changes in circumstances that will impact the reliability of the form. How would the payor or withholding agent know?

1. Payees, beneficial owners, and other income recipients will tell them. Many provide updates when they are moving or any important status changed. One particular change that may fall through the cracks is on the Form W-8ECI. Sometimes the income stops being effectively connected to a United States trade or business. Once the withholding agent receives notification of this from its income recipient, the form expires and is no longer reliable. Withholding agents need to pay attention to the income noted on Forms W-8ECI and identify that it applies to the type of income they are paying to that income recipient. Payors and withholding agents must keep up to date records and be sure to connect those records with a process for updating withholding certificates where required.



2. **IRS FFI List.** Payors and withholding agents that make payments subject to chapter 4 need to assess the status of an income recipient that is an FFI and whether it is on the IRS FFI list. They must revisit this list more than one time a year and be prepared to request updated Forms W-8 in the event that the chapter 4 status changed.
3. **B Notices and other IRS Notices.** Payors and withholding agents must be sure that the office in their organisation that receives notices from the IRS also communicates directly and quickly with the business processes that the notices will impact. These impacts could be related to updating payee specific details, withholding rates, withholding certificate expiration, or any other critical information reporting and withholding process.

Once payors and withholding agents are convinced that they have covered all bases and know the specific population of withholding certificates to request, it is time to send out the solicitations.

Here are few tips:

1. Work with your tax advisor and legal team to draft a clear, concise, and detailed message to the recipient that must provide a new withholding certificate. Do not coach or lead the recipient into choosing one form over another and do not provide tax advice. Be sure to instruct the recipient to request tax advice if needed. Include Forms and Instructions, contact information, and a return package, if necessary.
2. Consider including an Affidavit of Unchanged Status where you are making payments of amounts subject to withholding under chapter 3 or withholdable payments under chapter 4. A withholding certificate furnished after the date of payment will be considered effective as of the date of the payment if the certificate contains a signed affidavit (either at the bottom of the form or on an attached page) that states that the information and representations contained on the certificate were accurate as of the time of the payment. A certificate obtained within 30 days after the date of the payment will not be considered to be unreliable solely because it does not contain an affidavit. Please refer to the Treasury Regulations for more details on how and when to use these affidavits.
3. Keep detailed and accurate records of dates, times, and withholding certificates requested. This practice will build documentation of good faith efforts in terms of collecting required documentation.
4. Follow up! Be sure to follow up on any inquiries or issues noted during the mailing process – whether it be via a postal service or electronically.



### It is December 31 and the Updated Withholding Certificate is not Here!

Uh oh, in most cases, the accounts that have not provided updated withholding certificates by December 31 now have expired forms. If the payor or withholding agent cannot associate a payment with a reliable withholding certificate, at the time of payment, then it must apply the presumption rules. Any reportable payments made to U.S. persons (e.g., assuming a Form W-9 is no longer reliable due to change in circumstances) may be subject to backup withholding according to the rules of Code Section 3406 and its corresponding regulations.

For payments of amounts subject to withholding under chapter 3 or withholdable payments under chapter 4, withholding agents have to refer again to the extensive presumption rules. The IRS website provides a nice summary with references to the Treasury Regulations [here](#). Where you are making these types of payments and still do not have a withholding certificate by January 1, consider requesting an Affidavit of Unchanged Status to cover the payment period.

But, in all circumstances, do not stop your process! Continue to request the documentation until you receive it.

### **How to Implement**

In addition to the items suggested in this article, we have a few recommendations to help with the withholding certificate resolicitation process:

- Explore electronic withholding certificate vendors. Requesting this information online is becoming increasingly helpful with alarmingly high response rates.
- Explore tax reporting packages, current systems and applications, and other processes to confirm that there is a process in place for identifying incorrect name/TIN combinations. This way you will have a reliable list to use in your resolicitation process.
- Connect all of your information reporting and withholding processes with each other, with your legal team, and with the office that handles and manages any notices or inquiries from the IRS or any related government offices.
- Use tax calendars to identify expiration periods and milestones related to the resolicitation process.
- Update process and procedure manuals to incorporate any changes required. Remember to add a new procedure to check the continuous use forms for any updates on a regular basis.
- Update training materials and presentations to staff.
- Update any relevant controls, approvals, or sign off procedures for making payments if yearend reporting is referenced.

Do you have a massive resolicitation process this year? Share your experiences with us in the [comments](#) or [e-mail us!](#)

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