

# MEMORANDUM

## State of Alaska Department of Law

TO: The Honorable Wilson Condon  
Commissioner  
Department of Revenue

DATE: May 8, 1997

FILE: 663-97-0374

TELEPHONE NO.: 465-3600

SUBJECT: Requests for Social Security  
Numbers on PFD  
Applications

FROM: Vincent L. Usera  
Assistant Attorney General  
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You have requested that we address several questions concerning the request for an individual to provide a social security number on applications for Permanent Fund Dividends (PFDs).

**Question 1:** Is the department permitted or required to seek from a PFD applicant that individual's social security number (SSN)?

Short answer: The department is required to seek an SSN.

Under federal law, any payor of a payment of \$600 or more which is includible in the payee's gross income of money is required to complete and file a return reporting that income to the payee. 26 U.S.C. § 6041. Regulations adopted under that section provide that the information is to be reported using IRS Form 1099. 26 C.F.R. § 1.6041-1(g). The Alaska PFD is considered a payment that is part of gross income under 26 U.S.C. § 61.<sup>1</sup> While the PFD is not specifically included in the statute, case law has determined that, from a reading of all the applicable statutes together, "[G]ross income includes income from whatever source derived, unless specifically exempted." *Gardiner v. United States*, 391 F.Supp. 1202, 1207 (C.D. Utah, 1975), *aff'd* 536 F.2d 903 (10th Cir. 1976). The Internal Revenue Service has by revenue ruling determined that income from the payment of a PFD is includible in gross income and, therefore, must be reported. I.R.S. Rev. Rul. 85-39, 1985-1 C.B. 21. (Copy attached)

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<sup>1</sup> 26 U.S.C. § 61(a) provides:

(a) Except as otherwise provided in this subtitle, gross income means all income from whatever source derived . . . . (The section then lists 15 specific categories of income, none of which precisely include a PFD.)

Persons required to report a payment made to them which they are, in turn, required to report to the IRS, are constrained to report an identifying number to the payor of that payment. 26 U.S.C. § 6109(a)(2).<sup>2</sup> Persons required to report a payment made to a third party are constrained to include in that report an identifying number for the payee. 26 U.S.C. § 6109(a)(3).<sup>3</sup> Further in that section, the social security account number issued to an individual is specified as the identifying number for individuals. 26 U.S.C. § 6109(d).<sup>4</sup>

Federal law provides a consequence for any person who fails to provide an SSN to a payor required to report the payment. The backup withholding provisions of

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<sup>2</sup> That section provides:

**(2) Furnishing number to other persons.** Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person or whose identifying number is required to be shown on a return of another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

<sup>3</sup> That section provides:

**(3) Furnishing number of another person.** Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

<sup>4</sup> That section provides:

**(d) Use of social security account number.** The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary [of the Treasury], be used as the identifying number for such individual for purposes of this title.

26 U.S.C. § 3406 require that if a payee of any reportable payment “fails to furnish his TIN<sup>5</sup> to the payor in the manner required” the payor must deduct and withhold 31 percent of the payment.<sup>6</sup> A “reportable payment” is “any reportable interest or dividend payment, and any other reportable payment.” 26 U.S.C. § 3406(b). Thus, an applicant for a PFD must provide the department with a tax identification number. Since only an individual can be a recipient of a PFD, the identification number is the person’s social security number as provided in 26 U.S.C. § 6109(d).

The department must, therefore, demand on an application for a PFD that the individual provide a social security number under which the payment would be reported to the Internal Revenue Service.

**Question 2:** What notice, if any, should appear on the application where an individual’s social security number is sought?

Presently, the PFD application form states that the applicant’s social security number is an optional item of information, but that failure to provide the number results in withholding of 31 percent of the PFD as required by federal law. This statement is incorrect. Supplying the social security number is a mandatory requirement (*see above*).

The State is required to give an applicant notice of three items of information:

- (1) whether it is mandatory or voluntary to provide an SSN;
- (2) the statutory authority under which the SSN is solicited; and
- (3) the uses that may be made of the SSN.

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<sup>5</sup> 26 U.S.C. § 7701. **Definitions.** This section provides:

(41) The term “TIN” means the identifying number assigned to a person under [26 U.S.C.] section 6109.

<sup>6</sup> Certain other events also trigger the backup withholding requirements. For example, an individual who provides an obviously incorrect SSN—such as one having an incorrect number of digits—is considered to have “failed to furnish a TIN” and must be treated accordingly. 26 U.S.C. § 3406(h)(1).

5 U.S.C. § 552a, note.<sup>7</sup> Federal law does not mandate any specific language for the notice when seeking a payee's social security number, however, we suggest the following language be placed on the PFD application:

Federal law (26 U.S.C. § 6109) makes it mandatory that you provide your social security number on this application. It also requires that, if you fail to provide a correct number, we must withhold 31 percent of your Permanent Fund Dividend and remit that to the Internal Revenue Service. (26 U.S.C. § 3406) The State may make your social security number available to certain state and federal agencies for a variety of purposes. For a list of these agencies, see regulation 15 AAC 23.253, reprinted on page \_\_\_ of this pamphlet.

**Question 3:** Can the State refuse to pay a PFD to an individual who fails to supply a social security number? Is the State obligated to refuse?

Federal law does not precisely address this issue, but does state:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, . . .

Sec. 7(b), 5 U.S.C. § 552a, note, contained in the Act of Dec. 31, 1974, P.L. 93-579, § 7, 88 Stat. 1909. Since 26 U.S.C. § 6109(a)(2) mandates disclosure, the prohibition on denying a benefit does not apply. Under this provision, then, it would not be unlawful to deny a PFD to an individual who refused or failed to provide a valid SSN. Nothing indicates that there is any obligation to deny payment because of a failure to provide an SSN. Thus the second part of the question is answered: the State is not obligated to refuse payment of a PFD for that reason. We believe, however, that the intent of Congress can be derived by implication to answer the first

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<sup>7</sup> This section, contained in the Act of Dec. 31, 1974, P.L. 93-579, § 7, 88 Stat. 1909, provides:

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what use will be made of it.

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part. The backup withholding provisions of 26 U.S.C. § 3406 contemplate the payment despite a failure to provide an SSN, since the act of withholding a certain amount presumes ultimate payment. Thus, we believe Congress did not intend for payments to be completely denied if the payee fails to provide a valid SSN, but that only 31 percent of the payment be withheld. We conclude that state law requires payment of a PFD even if the applicant withholds his or her SSN, assuming all other requirements are met.

We hope this resolves your questions. If there is anything further you require in this regard, please don't hesitate to contact us.

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