

Part III - Administrative, Procedural and Miscellaneous

Returns Relating to Interest on Education Loans

Notice 98-7

PURPOSE

This notice describes the information reporting requirements for 1998 under § 6050S of the Internal Revenue Code (as enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 202(c), 111 Stat. 804 (the Act)) that apply to certain persons who receive payments of interest that may be deductible as qualified education loan ("student loan") interest. The Treasury Department intends to issue regulations on the information reporting required under § 6050S. Pending the issuance of those regulations, this notice describes who must report information with respect to payments of student loan interest, and the nature of the information that will be required under § 6050S for 1998.

For 1998, payees are required to report interest received only with respect to student loans that have a "covered period" (described below) ending during or after 1998. Comments are requested regarding the student loan interest reporting requirements that should apply for future years. The Internal Revenue Service will issue additional guidance on the student loan interest that a taxpayer may deduct, including further guidance for determining whether a taxpayer has made a payment of interest on a student loan during the first 60 months in which

interest payments are required.

BACKGROUND

A. The Student Loan Interest Deduction.

Section 202(a) of the Act added § 221 to the Code. Section 221 allows certain taxpayers who pay interest on qualified education loans to claim a federal income tax deduction for their interest payments, regardless of whether they itemize other deductions.

A qualified education loan is a loan used to pay the costs of attendance at an eligible educational institution for a student enrolled at least half-time in a program leading to a degree, certificate, or other recognized educational credential. The student must be the taxpayer, the taxpayer's spouse, or the taxpayer's dependent at the time the loan was taken. A loan made by an individual who is related to the borrower, within the meaning of § 267(b) or § 707(b)(1), is not a qualified education loan.

An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution that is described in § 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, is eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. For purposes of the student loan interest deduction, eligible educational institutions also include

institutions that conduct an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

Costs of attendance are generally the same as those described in § 472 of the Higher Education Act for purposes of calculating a student's financial need (e.g., tuition, fees, room, board, books, equipment, and other necessary expenses, such as transportation). However, for purposes of the student loan interest deduction, costs of attendance are reduced by educational assistance that the student receives and excludes from gross income under § 127, 135, 530, or as a scholarship.

The student loan interest deduction is available only for interest payments made during the first 60 months, whether or not consecutive, in which interest payments are required on the loan.

Notice 97-60, 1997-46 I.R.B. 8, provides additional information about the student loan interest deduction.

B. Information Reporting Relating to Student Loan Interest.

Section 6050S(a) requires information reporting by any person engaged in a trade or business who, in the course of that trade or business, receives from any individual interest aggregating \$600 or more for any calendar year on 1 or more qualified education loans.

Section 6050S(b) provides that the return of information must be in the form prescribed by the Secretary and contain:

- (1) the name, address, and taxpayer identification number

(TIN) of the individual with respect to whom interest was received,

(2) the name, address, and TIN of any individual certified by the individual named in the first item as the taxpayer who will claim that individual as a dependent for purposes of the deduction under § 151 for any taxable year ending with or within the year for which the information return is filed,

(3) the aggregate amount of interest received for the calendar year with respect to the individual named in the first item, and

(4) such other information as the Secretary may prescribe.

Section 6050S(c) states that information reporting is required by governmental units or any agency or instrumentality thereof. The return required by the governmental entity must be made by the officer or employee appropriately designated for the purpose of making the return.

Section 6050S(d) provides that every person required to make an information return under § 6050S(a) must also furnish to each individual whose name is required to be included in the return a written statement showing the name, address, and phone number of the reporting person's information contact, and the aggregate amounts required to be included in the return.

Section 6050S(f) provides that, in the case of any amount received on behalf of another person, only the person first receiving the amount is required to make the return under § 6050S. Thus, where more than one person has a connection with a

qualified education loan, the person first receiving the payment of interest, such as a loan servicer or collection agent receiving payments on behalf of the lender, is required to file an information return regarding the interest received on the loan.

DISCUSSION

A. Definitions.

The following definitions apply to these terms for purposes of this notice:

(1) Payee. A payee is the person first receiving one or more interest payments on a student loan.

(2) Payor. A payor is the individual with respect to whom interest payments are received on a particular student loan.

(3) Consolidated Loan. A consolidated loan is a single loan refinancing more than one student loan.

(4) Collapsed Loan. A collapsed loan is a set of loans of a single payor treated as a single loan for loan servicing purposes.

(5) Defaulted Loan. A defaulted loan is a loan with respect to which required payments of interest and principal have not been made when due over a period of time such that the holder has declared the loan in default based on its terms and conditions, and, if applicable, sought recourse against the ultimate guarantor of the loan.

(6) Covered Period. For loans other than consolidated loans, collapsed loans, and defaulted loans, the covered period

begins on:

(a) the date on which the loan went into repayment status if the payee knows or has reason to know that date; or

(b) January 1, 1998, if the payee does not know and does not have reason to know that date.

For consolidated loans and collapsed loans, the covered period begins on:

(a) the most recent date on which any of the loans subject to consolidation or collapse went into repayment status, if the payee knows or has reason to know that date; or

(b) January 1, 1998, if the payee does not know and does not have reason to know that date.

For defaulted loans, the covered period begins on:

(a) the date the loan went into repayment status if the payee knows or has reason to know that date;

(b) the date the loan went into default, if the payee knows or has reason to know that date and does not know or have reason to know the date the loan went into repayment status; or

(c) January 1, 1998, if the payee does not know and does not have reason to know the dates the loan went into repayment status or default.

The covered period ends on the date that is 60 months after the date on which the period starts or, if later, the last day of

the month in which that 60-month date occurs. However, if the payee knows or has reason to know of any periods of grace, deferment, or forbearance during the covered period, the covered period is extended by the number of months the loan was subject to grace, deferment, or forbearance.

(7) Covered Student Loan. A covered student loan is a loan with a covered period ending during or after 1998 that is either:

(a) subsidized, guaranteed, financed, or otherwise treated as a student loan under a program of the federal, state, or local government or an institution of postsecondary education, or

(b) certified by the payor as a student loan.

B. Who Must File for 1998.

Payees who receive interest aggregating \$600 or more during 1998 with respect to a single payor on one or more covered student loans must file an information return with respect to that interest.

C. Information Required for 1998.

Payees required under this notice to file information returns for 1998 must properly complete Form 1098-E, Student Loan Interest Payments, for all student loan accounts that contain one or more covered student loans ("student loan account"). A payee may file a separate Form 1098-E for each student loan account of the payor, or a single Form 1098-E for all student loan accounts of the payor.

For 1998, a properly completed Form 1098-E filed with the Service must include:

- (1) the name, address, and TIN of the payee;
- (2) the name, address, and TIN of the payor; and
- (3) the aggregate amount of interest received during 1998 with respect to the student loans in the account or accounts included on the return.

D. Mixed Use Loans and Revolving Accounts.

Payments of interest made on or after January 1, 1998, on mixed use loans or revolving accounts, such as credit card accounts, are treated as interest paid with respect to a student loan (and must be reported as such) only if the mixed use loan or revolving account is certified to be, in part, a student loan, and the payee has a reasonable method for allocating the interest payments to the part of loan that is certified to be a student loan.

E. Coordination with Reporting on Payments of Mortgage Interest.

If, for a year before 1998, a payee treated a loan as a mortgage within the definition of § 6050H(e) for purposes of the information reporting required under § 6050H, the payee must continue to treat the loan as a mortgage for information reporting purposes, even if all or part of the loan is used to pay costs of attendance.

For loans made on or after January 1, 1998, the payee must treat loans secured by real property and not made exclusively to

acquire or improve real property as either mortgages or student loans in accordance with the certification provided by the payor. Thus, if a payor certifies all of a loan secured by real property and made on or after January 1, 1998, as a student loan, the payee must treat the entire loan as a student loan and not as a mortgage for purposes of information reporting. If the payor certifies part of a loan as a student loan, only the certified portion of the loan may be treated as a student loan for purposes of information reporting. For loans made on or after January 1, 1998, the payee must treat a loan secured by real property and made exclusively to acquire or improve real property as a mortgage and provide information returns as required by § 6050H. The regulations under § 6050H will be amended to be consistent with this rule.

F. When To File.

The information returns required under § 6050S for 1998 must be sent to the Service by March 1, 1999.

G. Manner of Filing.

The regulations under § 6011 will be amended to require any person required to file 250 or more Forms 1098-E for 1998 to file those returns by magnetic media or electronically. Additional guidance will be provided on how to file by magnetic media or electronically.

H. Statements To Be Provided to Payors.

The payee must provide each payor a statement containing the same information that is provided to the Service on the

information return required by § 6050S. In addition, the statement provided to the payor must contain a phone number for the individual serving as information contact of the payee. The statement must also notify the payor that the amount of interest reported as paid may differ from the amount of interest that the payor may be able to claim as a deduction. The statement must be provided to the payor by February 1, 1999. The statement may be a copy of Form 1098-E (or an acceptable substitute statement).

I. Collecting Information.

The Service is developing an optional Form W-9S for use in collecting information for the purpose of complying with § 6050S. The payee will be able to use the form to collect the information necessary to meet the information reporting requirements of § 6050S. The information can be collected on paper or on an electronic version of Form W-9S (or an acceptable substitute). The payee also may collect the necessary information by using its own forms and procedures.

J. Waiver of Penalties.

The Treasury Department intends to issue regulations under § 6050S, and modify the regulations under § 6050H, to provide guidance on how payees are to comply with the requirements of the statute. Until the regulations are adopted, no penalties will be imposed under §§ 6721 and 6722 for failure to file correct information returns with the Service or to furnish correct statements to the payors with respect to whom information reporting is required under § 6050S (or § 6050H for those loans

secured by real property the proceeds from which are used to pay the costs of postsecondary education). Furthermore, even after the regulations are adopted, no penalties will be imposed under §§ 6721 and 6722 for failure to file correct information returns or furnish correct statements for 1998 as required by § 6050S or § 6050H if the payee made a good faith effort to file information returns and furnish statements in accordance with this notice.

K. Request for Comments.

The Conference Report accompanying the Act states the following, "The conferees expect that the Secretary of Treasury will issue regulations setting forth reporting procedures that will facilitate the administration of this provision. Specifically, such regulations should require lenders separately to report to borrowers the amount of interest that constitutes deductible student loan interest (i.e., interest on a student loan during the first 60 months in which interest payments are required). In this regard, the regulations should include a method for borrower certification to a lender that the loan proceeds are being used to pay for qualified higher education expenses." H.R. Conf. Rep. No. 220, 105 Cong., 1st Sess. at 368 (1997). Treasury and the Service invite taxpayers to submit comments on how regulations could be drafted in accordance with the legislative history. In particular, comments are requested on how parties receiving interest are to determine whether a payment of interest on a student loan has been made during the first 60 months in which interest payments are required and on

how much of a payment should be treated as interest, especially where interest has been capitalized. Comments are requested by April 30, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br1)
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044,

or hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br1)
1111 Constitution Ave., N.W.
Washington, D.C.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the IRS Internet site). All comments will be available for public inspection and copying in their entirety.

DRAFTING INFORMATION

The principal author of this notice is John McGreevy of the

Office of the Assistant Chief Counsel (Income Tax and Accounting). For further information regarding information reporting, contact Mr. McGreevy on (202) 622-4910 (not a toll-free call) or, regarding the deduction, call John Moriarty on (202) 622-4950 (not a toll-free call).