

# INTERNAL REVENUE BULLETIN



## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

**Bulletin No. 2016–33**  
**August 15, 2016**

## SPECIAL ANNOUNCEMENT

### **Notice 2016–48, page 235.**

This Notice explains how the IRS will implement the changes to the Individual Taxpayer Identification Number (ITIN) program resulting from the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

## INCOME TAX

### **REG–103058–16, page 238.**

These proposed regulations (REG–103058–16) address various issues under section 6055, including identifying the health insurance issuer as the reporting entity for catastrophic health coverage enrolled in through the Health Insurance Marketplace and clarifying the circumstances when reporting is not required of individuals who are covered by more than one plan or program that is minimum essential coverage. In addition, these proposed regulations modify the taxpayer identification number (TIN) solicitation requirements that section 6055 reporting entities must follow to qualify for relief from penalties for a failure to report a TIN.

### **REG–131418–14, page 248.**

This document contains proposed regulations that relate to the education tax credit under section 25A, the information reporting requirements under section 6050S and implements amendments under the Trade Preferences Extension Act of 2015 (TPEA) and the Protecting Americans from Tax Hikes Act of 2015 (PATH).

### **Announcement 2016–27, page 238.**

Announcement 2016–27 provides guidance to jurisdictions that are treated as if they have an IGA in effect and FFIs located in those jurisdictions. Each jurisdiction that is treated as if it has an IGA in effect and that wishes to be continue to be treated as

if it has an IGA in effect must provide the Treasury Department, by December 31, 2016, with a detailed explanation of why the jurisdiction has not yet brought the IGA into force and provide a step-by-step plan that the jurisdiction intends to follow in order to sign the IGA (if it has not been signed) and bring the IGA into force, including expected dates for achieving each step. Treasury will then evaluate the submission and determine whether the jurisdiction will continue to be treated as if it has an IGA in effect. If a jurisdiction ceases to be treated as if it has an IGA in effect, an FFI in that jurisdiction will no longer be able to rely on the IGA to be treated as complying with and exempt from withholding under, FATCA. Such FFIs generally will have to enter into FFI Agreements in order to comply with their FATCA obligations, unless the FFIs qualify for an exemption under the FATCA regulations.

### **Notice 2016–48, page 235.**

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### **T.D. 9779, page 233.**

Section 83 addresses the income tax consequences of property transferred in connection with the performance of services. Section 83(b) permits the service provider to elect to include in gross income, as compensation for services, the fair market value of substantially nonvested property at the time of transfer. This election is made by filing a written statement with the Internal Revenue Service no later than 30 days after the date that the property is transferred. These final regulations eliminate the regulatory requirement that a copy of a § 83(b) election be submitted with the taxpayer's income tax return for the taxable year in which the property is transferred.

## **EMPLOYEE PLANS**

### **T.D. 9779, page 233.**

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## **ADMINISTRATIVE**

### **Notice 2016-48, page 235.**

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# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

T.D. 9779

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Property Transferred in Connection with the Performance of Services

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to property transferred in connection with the performance of services. These final regulations affect certain taxpayers who receive property transferred in connection with the performance of services and make an election to include the value of substantially nonvested property in income in the year of transfer.

DATES: *Effective Date:* These regulations are effective on July 26, 2016.

*Applicability Date:* For dates of applicability, see § 1.83-2(g).

FOR FURTHER INFORMATION CONTACT: Thomas Scholz or Michael Hughes at (202) 317-5600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Section 83 of the Internal Revenue Code (Code) addresses the tax consequences of a transfer of property in connection with the performance of services. Section 83(a) of the Code provides generally that the excess of the fair market value of the transferred property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first time that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid

for the property is included in the service provider's gross income for the taxable year which includes such time. Section 83(b) and § 1.83-2(a) permit the service provider to elect to include in gross income, as compensation for services, the excess (if any) of the fair market value of the property at the time of transfer over the amount (if any) paid for the property. Under section 83(b)(2), an election under section 83(b) must be made in accordance with the regulations thereunder. Under § 1.83-2(c), the election must be filed with the IRS no later than 30 days after the date on which the property is transferred, and a copy of the election must be submitted with the taxpayer's income tax return for the taxable year in which the property is transferred.

On July 17, 2015, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published a notice of proposed rulemaking (REG-135524-14) in the **Federal Register** (137 FR 42439) under section 83 of the Code eliminating the requirement that a copy of a section 83(b) election be submitted with the taxpayer's income tax return for the taxable year in which the property is transferred. Treasury and the IRS received no comments responding to the notice of proposed rulemaking. No public hearing was requested and no public hearing was held. Treasury and the IRS now adopt the proposed regulations as final regulations without modification.

#### Explanation of Provisions

These final regulations remove the second sentence in § 1.83-2(c) of the existing regulations, which requires that a taxpayer submit a copy of a section 83(b) election with the taxpayer's tax return for the year in which the property subject to the election was transferred. Accordingly, under these final regulations, a taxpayer is no longer required to file a copy of a section 83(b) election with the taxpayer's income tax return.

Taxpayers are reminded of their general recordkeeping responsibilities pursuant to section 6001 of the Code, and more specifically of the need to keep records

that show the basis of property owned by the taxpayer. Taxpayers must maintain sufficient records to show the original cost of the property and to support the tax treatment of the property transfer reported on the taxpayers' returns. Taxpayers must keep these records as long as they may be needed for the administration of any provision of the Code. Generally, this means records that support items shown on a return must be retained until the period of limitations for that return expires. See section 6501 of the Code. A copy of any section 83(b) election made with respect to property must be kept until the period of limitations expires for any return with respect to which the income inclusion or basis of the property is relevant.

#### Applicability Date

These regulations apply to property transferred on or after January 1, 2016. For transfers of property on or after January 1, 2015 and prior to January 1, 2016, the preamble to the proposed regulations provides that taxpayers may rely on the guidance in the proposed regulations (which is identical to the guidance contained in these final regulations).

#### Effect on Other Documents

Rev. Proc. 2012-29 (IRB 2012-28, 49) states that a taxpayer making a section 83(b) election must submit a copy of the election with his or her tax return for the taxable year in which such property was transferred. Effective as of July 26, 2016, Rev. Proc. 2012-29 is revoked, in part, to the extent it requires, inconsistent with these final regulations, a taxpayer to submit a copy of a section 83(b) election with his or her income tax return.

#### Statement of Availability of IRS Documents

Rev. Proc. 2012-29 is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

## Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

## Drafting Information

The principal authors of these final regulations are Thomas Scholz and Michael Hughes, Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from

the IRS and the Treasury participated in their development.

## List of Subjects 26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

### PART 1—INCOME TAXES

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805\* \* \*

Par. 2. Section 1.83–2 is amended by revising paragraph (c) and adding paragraph (g) to read as follows:

*§ 1.83–2 Election to include in gross income in year of transfer.*

\* \* \* \* \*

(c) *Manner of making election.* The election referred to in paragraph (a) of this section is made by filing one copy of a written statement with the internal revenue office with which the person who performed the services files his return.

\* \* \* \* \*

(g) *Effective/applicability date.* Paragraph (c) of this section applies to property transferred on or after January 1, 2016.

John M. Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved: April 20, 2016.

Mark J. Mazur,  
*Assistant Secretary of the  
Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on July 25, 2016, 8:45 a.m., and published in the issue of the Federal Register for July 26, 2016, 81 F.R. 48707)



# Part III. Administrative, Procedural, and Miscellaneous

## Implementation of PATH Act ITIN Provisions

### Notice 2016-48

Section 203 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113, *div. Q*, enacted on December 18, 2015, modified section 6109 of the Internal Revenue Code, and in so doing, made significant changes to the Individual Taxpayer Identification Number (ITIN) program. This notice explains those changes, how the Internal Revenue Service (IRS) will implement the changes, and the potential consequences to taxpayers who do not renew an ITIN when required by the PATH Act. Finally, this notice requests comments regarding the ITIN program and Certified Acceptance Agents (CAAs).

#### BACKGROUND

Section 6109 permits the IRS to issue identifying numbers for tax purposes (taxpayer identification numbers) and to request information to issue such numbers. Generally, an individual's taxpayer identification number is a social security number (SSN); however, some individuals are ineligible to receive an SSN but still need a taxpayer identification number for U.S. tax purposes.

An ITIN is a nine-digit tax processing number issued by the IRS that is formatted like an SSN, NNN-NN-NNNN. Each ITIN begins with the number 9 and has fourth and fifth digit ranges from 50-65, 70-88, 90-92, and 94-99. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number for U.S. tax purposes but who do not have, and are not eligible to obtain, an SSN from the Social Security Administration (SSA). The PATH Act made changes to the ITIN program.

#### *ITIN Application Process*

The basic process for applying for an ITIN will not change as a result of the PATH Act. Individuals apply for an ITIN by submitting Form W-7, *Application for IRS Individual Taxpayer Identification*

*Number*, (Form W-7SP for the Spanish language version). Most taxpayers must submit their Form W-7 with the tax return for which the ITIN is needed. Both domestic and foreign applicants may submit their Form W-7, tax return, and the required documentation by mail to the ITIN Operation Unit in Austin, Texas. Original documents or certified copies of documents from the issuing agency are the only acceptable documentation, except for a few very limited exceptions.

Under the PATH Act, in-person applications may be submitted to an employee of the IRS authorized to review and accept applications or to a community-based certified acceptance agent approved by the IRS. Individuals who apply in person, other than dependents, will receive their documentation back once the in-person application is completed. Currently, all IRS employees authorized to review and accept applications are located in the United States. The IRS is reviewing the new law and considering how to implement the new provision for community-based certified acceptance agents. Until further guidance is issued, all applicants may continue to submit their application package (*i.e.*, Form W-7 and supporting documentation) to CAAs for review under existing procedures (see <https://www.irs.gov/individuals/acceptance-agent-program>). Applicants may also submit their application packet in person at an IRS Taxpayer Assistance Center. Not all locations provide this service and many do so only by appointment. Taxpayers should first check <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> to find a location that has employees authorized to review and accept applications, and if applicable, make an appointment before visiting.

See the Instructions for Form W-7 and <https://www.irs.gov/individuals/additional-itin-information> for more detailed information regarding the application process for an ITIN.

*Certain ITINs will need to be renewed beginning in 2017*

Prior to the PATH Act, a taxpayer applied for and received an ITIN only once.

The ITIN remained in effect unless the taxpayer applied for and received an SSN. On June 30, 2014, the IRS announced in News Release IR 2014-76 that it would deactivate ITINs that had not been used on a tax return in five consecutive years. That deactivation process had not yet begun at the time the PATH Act was enacted and, as a result of the PATH Act, is now obsolete. Under the PATH Act, certain ITINs will no longer be in effect unless they are renewed.

Under the PATH Act, any ITIN that is not used on a federal tax return for three consecutive tax years, either as the ITIN of an individual who files the return or as the ITIN of a dependent included on a return, will expire on December 31 of the third consecutive tax year of nonuse. For example, an individual applied for and received an ITIN in 2015 that is used in 2015 on the individual's 2014 federal income tax return. If the individual does not file or is not claimed as a dependent on a tax return in 2016, 2017, and 2018, the ITIN will expire on December 31, 2018. This rule applies to all ITINs regardless of when the ITIN was issued.

For ITINs issued before 2013, the PATH Act provides that ITINs will no longer be in effect according to the following schedule, unless the ITIN has already expired due to nonuse for three consecutive years as described above:

- ITINs issued before 2008 will remain in effect until January 1, 2017.
- ITINs issued in 2008 will remain in effect until January 1, 2018.
- ITINs issued in 2009 or 2010 will remain in effect until January 1, 2019.
- ITINs issued in 2011 or 2012 will remain in effect until January 1, 2020.

#### HOW TO RENEW AN ITIN

*ITINs that have not been used in the last three consecutive years*

ITINs that have expired due to nonuse in the last three consecutive years, as described above, may be renewed anytime starting October 1, 2016 by submitting a Form W-7 and required documentation. These individuals may renew their ITIN without having to attach a tax return to the

Form W-7. Filers should use the most recent revision of the Form W-7 and check the box that says “renewal.” Filers should follow the instructions on the Form W-7 and include all the information and documentation required by the instructions except for the requirement to attach Form W-7 to a tax return. Alternatively, individuals may choose to wait to submit their Form W-7 with their return. Once the Form W-7 renewal application is approved, the individual’s ITIN will again be effective, and the individual can continue to use the same ITIN. The applicant will receive a letter from the IRS stating that the application has been approved. Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years.

#### *ITINs issued prior to January 1, 2013 and currently in use*

ITINs issued prior to January 1, 2013 that have been used on a tax return in the last three consecutive years are set to expire based on a multi-year schedule. Under the PATH Act, this schedule is based on the date that an ITIN was issued. However, many ITIN holders may not know when their ITIN was issued and previously had no reason to keep a record of the date an ITIN was issued. To simplify the renewal process and allow for the effective administration of the program, the IRS will administer the renewal of ITINs on a schedule that is different from the schedule in the PATH Act. The IRS will renew ITINs based upon the fourth and fifth digits (middle digits) in the ITIN. ITINs that contain the middle digits of 78 or 79 will no longer be in effect beginning January 1, 2017. The expiration and renewal schedules for ITINs with middle digits other than 78 or 79 will be announced in future guidance.

Beginning this summer, the IRS will send a Letter 5821 to individuals holding ITINs with the middle digits of 78 or 79 if the ITIN was used for a taxpayer or a dependent on a U.S. income tax return in any of the last three consecutive tax years informing them that they may submit a Form W-7 with original or certified documents to renew their ITINs. The Letter 5821 will be sent to the address used on the most recent income tax return on

which the ITIN appears or the most recently updated address for the taxpayer who filed the tax return provided to the IRS by the taxpayer or the U.S. Postal Service.

An individual with an ITIN that contains the middle digits of 78 or 79 who is sent a Letter 5821 may submit a Form W-7 and required documentation to renew their ITIN starting October 1, 2016. These individuals may renew their ITIN without having to attach Form W-7 to a tax return. Filers should use the most recent revision of Form W-7 and check the box that says “renewal.” To expedite processing, filers should include a copy of Letter 5821. Filers should follow the Instructions for Form W-7 and Letter 5821 and include all the information and documentation required by the instructions except for the requirement to attach Form W-7 to a tax return. The IRS anticipates that for applications mailed to the IRS under this process, documents will be returned to the applicant within 60 days from the date the application was received. Alternatively, individuals who are sent a Letter 5821 may choose to wait to submit their Form W-7 with their tax return. Once a Form W-7 renewal application is approved, the individual’s ITIN will again be effective, and the individual can continue to use the same ITIN.

To reduce the burden on taxpayers, the IRS will accept Forms W-7 from each member of a family in a single family submission starting October 1, 2016, if at least one of the family members is required to renew an ITIN because the middle digits are 78 or 79 and that family member received a Letter 5821. For this purpose, family members include the filer, the filer’s spouse, and any dependents claimed on the filer’s return.

ITINs with middle digits other than 78 or 79 that have been in use within the last three consecutive tax years should not be renewed and require no immediate action from the ITIN holder. The IRS will accept, and individuals should continue to file, tax returns using these existing ITINs. The IRS will provide information about the expiration schedule and renewal process for the remaining ITINs issued before 2013 in future guidance and expects the expiration and renewal process for the re-

maining ITINs to be completed over multiple years.

#### *What May Happen if an ITIN is not Renewed*

Once renewed, an ITIN will remain in effect unless it is not used on a tax return for three consecutive years. The issuance date of a renewed ITIN is the date the ITIN was originally issued, not the renewal date. Some individuals may not be aware that their ITIN has expired or that they must renew an expired ITIN. Returns filed by these individuals will be accepted by the IRS; however, there may be a delay in processing these returns, and certain credits, such as the Child Tax Credit and the American Opportunity Tax Credit, may not be allowed unless the ITIN is renewed. This could result in a reduced refund or additional penalties and interest. The IRS will notify these filers about the delay and any reduction in refunds and credits claimed and will inform them about the need to file Form W-7 to renew their ITIN.

#### *HOLDERS OF EXPIRED ITINs WHO HAVE OR BECOME ELIGIBLE FOR AN SSN*

An individual with an expired ITIN who has or becomes eligible for an SSN should not renew the ITIN. Instead, those individuals who already have an SSN should write a letter to the IRS or visit a local IRS office explaining that they now have an SSN and that they want all their tax records combined under their SSN. Details about what to include with the letter and where to mail it can be found at [www.irs.gov/Individuals/Additional-ITIN-Information](http://www.irs.gov/Individuals/Additional-ITIN-Information). Those individuals who are eligible to obtain an SSN should obtain one from the SSA and then follow the instructions above. Visit the SSA website at [www.ssa.gov](http://www.ssa.gov), for information on how to apply for an SSN.

#### *USE OF AN ITIN SOLELY ON AN INFORMATION RETURN*

An individual whose expired ITIN is used only on information returns filed and furnished by third parties, such as Forms 1099, is not required to renew the ITIN. ITINs may continue to be used for infor-

mation return purposes regardless of whether they have expired for individual income tax return filing purposes. If the individual is later required to file a tax return, however, the individual's ITIN will have to be renewed at that time. Additionally, the third parties who file and furnish information returns with an expired payee ITIN will not be subject to information return penalties under sections 6721 or 6722 solely because the ITIN is expired.

#### *REQUEST FOR COMMENTS*

Further guidance on other issues regarding the ITIN program will be forthcoming. The Treasury Department and the IRS request comments and recommendations regarding the ITIN program. Specifically, the Treasury Department and the IRS request comments on the following issues:

1. The eligibility requirements that should be established for organizations or

individuals applying to be community-based certified acceptance agents and ways to increase the number of community-based certified acceptance agents in a manner that will minimize the risk of fraud and non-compliance.

2. Additional guidance that would be beneficial in administering the implementation of section 203 of the PATH Act.

#### *How to Submit Comments*

Taxpayers may mail comments to:

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2016-48)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk  
Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2016-48)  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type IRS-2016-0032 in the search field on the [regulations.gov](http://www.regulations.gov) homepage to find this notice and submit comments). All comments submitted by the public in response to this notice will be available for public inspection and copying in their entirety.

#### *DRAFTING INFORMATION*

The principal author of this notice is Michael Hara of the Office of the Associate Chief Counsel (Procedure and Administration). For further information about this notice, call 1-800-908-9982.



## Part IV. Items of General Interest

### Update on Jurisdictions Treated as If They Have an IGA in Effect

#### Announcement 2016–27

##### I. BACKGROUND

In 2012, the U.S. Department of the Treasury (Treasury) released Model 1 and Model 2 intergovernmental agreements (IGAs) to facilitate implementation of the Foreign Account Tax Compliance Act (FATCA). Notice 2013–43 (2013–31 I.R.B.113) provides that a jurisdiction that has signed but not yet brought into force an IGA is treated as if it has an IGA in effect as long as the jurisdiction is taking the steps necessary to bring the IGA into force within a reasonable period of time. Announcement 2014–17 (2014–18 I.R.B. 1001) and Announcement 2014–38 (2014–51 I.R.B. 951) provide that jurisdictions treated as if they have an IGA in effect also include jurisdictions that, before November 30, 2014, had reached an agreement in substance with the United States on the terms of an IGA as long as the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible. Notice 2015–66 (2015–41 I.R.B. 541) announced that foreign financial institutions (FFIs) in partner jurisdictions with a signed or “agreed in substance” Model 1 IGA that had not entered into force as of September 30, 2015, would continue to be treated as complying with, and not subject to withholding under, FATCA so long as the partner jurisdiction continues to demonstrate firm resolve to bring the IGA into force and any information that would have been reportable under the IGA on September 30, 2015, is exchanged by September 30, 2016, together with any information that is reportable under the IGA on September 30, 2016.

An FFI that is resident in, or organized under the laws of, a jurisdiction that is treated as if it has an IGA in effect is permitted to register on the FATCA registration website and to certify to a withholding agent its status as an FFI covered by an IGA. Jurisdictions that are treated as if they have an IGA in effect, even though

the IGA is not yet signed, are treated as if they have in effect the relevant model provisions.

The list of jurisdictions treated as if they have an IGA in effect (the “IGA List”) may be found at <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>. As of the date of publication of this Announcement, the United States has signed IGAs with 83 jurisdictions; of those IGAs, 61 are in force. The United States has also reached agreements in substance with 30 jurisdictions.

##### II. EVALUATION OF JURISDICTIONS TREATED AS IF THEY HAVE AN IGA IN EFFECT

This Announcement provides that, on January 1, 2017, Treasury will begin updating the IGA List to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect. Each jurisdiction with an IGA that is not yet in force and that wishes to continue to be treated as having an IGA in effect must provide to Treasury by December 31, 2016, a detailed explanation of why the jurisdiction has not yet brought the IGA into force and a step-by-step plan that the jurisdiction intends to follow in order to sign the IGA (if it has not yet been signed) and bring the IGA into force, including expected dates for achieving each step. In evaluating whether a jurisdiction will continue to be treated as if it has an IGA in effect, Treasury will consider whether: (1) the jurisdiction has submitted the explanation and plan (with dates) described above; and (2) that explanation and plan, as well as the jurisdiction’s prior course of conduct in connection with IGA discussions, show that the jurisdiction continues to demonstrate firm resolve to bring its IGA into force. With respect to the timing of the exchange of prior year information upon entry into force of a Model 1 IGA, Treasury does not intend to find FFIs to be in significant non-compliance with the IGA as long as any information for prior years is exchanged before the next September 30th after the obligation under the IGA to exchange information has taken effect.

Jurisdictions that are initially determined to have demonstrated firm resolve to bring an IGA into force will not retain that status indefinitely. For example, failure to adhere to the expected timeline set out in the jurisdiction’s explanation could result in a determination that the jurisdiction is no longer demonstrating firm resolve to bring its IGA into force and therefore will no longer be treated as if it has an IGA in effect.

In order to provide notice to FFIs, a jurisdiction will not cease to be treated as having an IGA in effect until at least 60 days after the jurisdiction’s status on the IGA List is updated. FFIs in a jurisdiction that ceases to be treated as if it has an IGA in effect will no longer be able to rely on the IGA to be treated as complying with, and exempt from withholding under, FATCA. Unless they qualify for an exemption under the FATCA regulations, such FFIs generally will have to enter into FFI Agreements (see <https://www.irs.gov/businesses/corporations/fatca-foreign-financial-institution-registration-tool>) in order to comply with their FATCA obligations, including reporting information to the IRS and withholding pursuant to the terms of the FFI Agreement.

##### III. DRAFTING INFORMATION

The principal author of this notice is Michael Kaercher of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Kaercher at (202) 317-6942 (not a toll-free number).

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### Notice of Proposed Rulemaking

### Information Reporting of Catastrophic Health Coverage and Other Issues Under Section 6055

#### REG-103058–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to information reporting of minimum essential coverage under section 6055 of the Internal Revenue Code (Code). Health insurance issuers, certain employers, and others that provide minimum essential coverage to individuals must report to the IRS information about the type and period of coverage and furnish related statements to covered individuals. These proposed regulations affect health insurance issuers, employers, governments, and other persons that provide minimum essential coverage to individuals.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 3, 2016.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-103058-16), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-103058-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-103058-16).

#### FOR FURTHER INFORMATION

**CONTACT:** Concerning the proposed regulations under section 6055, John B. Lovelace, (202) 317-7006; concerning the proposed regulations under section 6724, Hollie Marx, (202) 317-6844; concerning the submission of comments, Regina Johnson, (202) 317-6901 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Infor-

mation and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 3, 2016. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.6055-1. The collection of information will be used to determine whether an individual has minimum essential coverage under section 1501(b) of the Patient Protection and Affordable Care Act (26 U.S.C. 5000A(f)). The collection of information is required to comply with the provisions of section 6055. The likely respondents are health insurers, self-insured employers or other sponsors of self-insured health plans, and governments that provide minimum essential coverage.

The burden for the collection of information contained in these proposed regulations will be reflected in the burden on Form 1095-B, Health Coverage, or another form that the IRS designates, which will request the information in the proposed regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

##### **Background**

Under section 5000A, individuals must for each month have minimum essential

coverage, qualify for a health coverage exemption, or make an individual shared responsibility payment with their income tax returns. Section 6055 provides that all persons who provide minimum essential coverage to an individual must report certain information to the IRS that identifies covered individuals and the period of coverage, and must furnish a statement to the covered individuals containing the same information. The information reported under section 6055 allows individuals to establish, and the IRS to verify, that the individuals were covered by minimum essential coverage for months during the year.

Information returns under section 6055 generally are filed using Form 1095-B. A separate and distinct health coverage-related reporting requirement under section 6056 requires that certain large employers report information on Form 1095-C, Employer-Provided Health Insurance Offer and Coverage. Self-insured employers required to file Form 1095-C use Part III of that form, rather than Form 1095-B, to report information required under section 6055 for individuals enrolled in the self-insured employer-sponsored coverage. These proposed regulations provide guidance under section 6055 only, which relates to Form 1095-B and Form 1095-C, Part III. These proposed regulations do not affect information reporting under section 6056 on Form 1095-C, Parts I and II.

Under section 5000A(f)(1), various types of health plans and programs are minimum essential coverage, including: (1) specified government-sponsored programs such as Medicare Part A, the Medicaid program under Title XIX of the Social Security Act (42 U.S.C. 1936 and following sections), the Children's Health Insurance Program under Title XXI of the Social Security Act (42 U.S.C. 1397aa and following sections) (CHIP), the TRICARE program under chapter 55 of Title 10, U.S.C., health care programs for veterans and other individuals under chapter 17 or 18 of Title 38 U.S.C., coverage for Peace Corps volunteers under 22 U.S.C. 2504(e), and coverage under the Nonappropriated Fund Health Benefits Program under section 349 of Public Law 103-337, (2) coverage under an eligible employer-sponsored plan, (3) coverage under a plan

in the individual market (such as a qualified health plan offered through an Affordable Insurance Exchange (Exchange, also known as a Marketplace)), (4) coverage under a grandfathered health plan, and (5) other coverage recognized as minimum essential coverage by the Secretary of Health and Human Services, in coordination with the Secretary of the Treasury.

Under section 5000A(f)(3) and § 1.5000A-2(g) of the Income Tax Regulations, coverage that consists solely of excepted benefits described in section 2791(c)(1), (c)(2), (c)(3), or (c)(4) of the Public Health Service Act (42 U.S.C. 300gg-91(c)), and the regulations under that section, is not minimum essential coverage. Section 1.5000A-2(b)(2) lists government-sponsored programs that provide limited benefits and which are not minimum essential coverage.

Under section 5000A(f)(4), an individual who is a bona fide resident of a United States possession for a month is treated as having minimum essential coverage for that month.

Notice 2015-68, 2015-41 I.R.B. 547, provides guidance on various issues under section 6055. In Notice 2015-68, the Treasury Department and the IRS stated that they intend to propose regulations under section 6055 addressing certain of these issues and requested comments. Comments were requested about the application of the reasonable cause rules under section 6724 to section 6055 reporting, in particular as applied to taxpayer identification number (TIN) solicitation and reporting.

#### *Persons Required To Report*

Under § 1.6055-1(c)(1)(iii), the executive department or agency of the governmental unit that provides coverage under a government-sponsored program is the reporting entity for government-sponsored minimum essential coverage. Section 1.6055-1(c)(3)(i) specifically provides that the State agency that administers the Medicaid or CHIP program, respectively, must report government-sponsored cover-

age under section 6055. Notice 2015-68 provides that Medicaid and CHIP agencies in U.S. possessions or territories are not required to report Medicaid and CHIP coverage because an individual eligible for that coverage is generally a bona fide resident of the possession or territory who is deemed to have minimum essential coverage under section 5000A(f)(4) and, therefore, does not require reporting under section 6055 to verify compliance with section 5000A.

In general, under § 1.6055-1(c)(1)(ii) the reporting entity for coverage under a self-insured group health plan is the plan sponsor. Section 1.6055-1(c)(2) provides rules for identifying which entity is the plan sponsor of a self-insured group health plan for purposes of section 6055. For this purpose, the employer is the plan sponsor of a self-insured group health plan established by a single employer (determined without aggregating related entities under section 414). If the plan or arrangement is established or maintained by more than one employer (including a Multiple Employer Welfare Arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA)), and the plan is not a multiemployer plan (as defined in section 3(37) of ERISA), each participating employer is a plan sponsor with respect to that employer's employees. For a self-insured group health plan or arrangement that is a multiemployer plan, the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan. For a self-insured group health plan or arrangement maintained solely by an employee organization, the plan sponsor is the employee organization.

The existing regulations at § 1.6055-1(d)(2) provide that no reporting is required for minimum essential coverage that provides benefits in addition or as a supplement to other coverage that is minimum essential coverage if the primary and supplemental coverage have the same plan sponsor or the coverage supplements

government-sponsored minimum essential coverage. Notice 2015-68 explained that this rule had proven to be confusing, and, accordingly, the Treasury Department and the IRS intended to propose regulations providing that (1) if an individual is covered by multiple minimum essential coverage plans or programs provided by the same provider, reporting is only required for one of the plans or programs; and (2) reporting generally is not required for an individual's minimum essential coverage to the extent that the individual is eligible for that coverage only if the individual is also covered by other minimum essential coverage for which section 6055 reporting is required.

#### *Information Required To Be Reported*

Under section 6055(b) and § 1.6055-1(e)(1), providers of minimum essential coverage must report to the IRS (1) the name, address, and employer identification number (EIN) of the reporting entity required to file the return; (2) the name, address, and TIN, or date of birth if a TIN is not available, of the responsible individual (except that a reporting entity may, but is not required to, report the TIN of a responsible individual not enrolled in the coverage); (3) the name and TIN, or date of birth if a TIN is not available, of each individual who is covered under the policy or program; and (4) the months of coverage for each covered individual.<sup>1</sup> Section 1.6055-1(b)(11) provides that the responsible individual includes a primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application who enrolls one or more individuals, including him or herself, in minimum essential coverage.

In addition, under § 1.6055-1(e)(2), for coverage provided by a health insurance issuer through a group health plan, information returns must report (1) the name, address, and EIN of the employer maintaining the plan, and (2) any other information that the Secretary requires for administering the credit under section 45R

<sup>1</sup>The Affordable Care Act also added section 6056, which requires that applicable large employers file and furnish statements containing information related to offers of coverage, if any, made to each full-time employee. To complete these statements properly, employers must have each employee's TIN. In accordance with the requirements of a different Code section (section 3402(f)(2)(A)), employers should have already sought each employee's TIN in advance of the deadline for filing and furnishing statements required under section 6056. Therefore, the TIN solicitation rules in these proposed regulations *only apply* to information reporting under section 6055 (which in the case of an applicable large employer providing coverage under a self-insured plan, includes information reporting on Form 1095-C, Part III).



(relating to the tax credit for employee health insurance expenses of small employers).

A reporting entity that fails to comply with the filing and statement furnishing requirements of section 6055 may be subject to penalties for failure to file timely a correct information return (section 6721) or failure to furnish timely a correct statement (section 6722). See section 6724(d); see also § 1.6055-1(h)(1). These penalties may be waived if the failure is due to reasonable cause and is not due to willful neglect. See section 6724(a). In particular, under § 301.6724-1(a)(2) of the Procedure and Administration Regulations penalties are waived if a reporting entity demonstrates that it acted in a responsible manner and that the failure is due to significant mitigating factors or events beyond the reporting entity's control. For purposes of section 6055 reporting, if the information reported on a return is incomplete or incorrect as a result of a change in circumstances (such as a retroactive change in coverage), a failure to timely file or furnish a corrected document is a failure to file a correct return or furnish a correct statement under sections 6721 and 6722. See § 1.6055-1(h)(2).

In general, under § 301.6724-1(e) a person will be treated as acting in a responsible manner if the person properly solicits a TIN but does not receive it. For this purpose, proper solicitation of a TIN involves an initial solicitation and two subsequent annual solicitations. In general, an initial solicitation is made when the relationship between the reporting entity and the taxpayer is established. If the reporting entity does not receive the TIN, the first annual solicitation is generally required by December 31 of the year in which the relationship with the taxpayer begins (January 31 of the following year if the relationship begins in December). Generally, if the TIN is still not provided, a second annual solicitation is required by December 31 of the following year. Similar rules applying to filers who file or furnish information reports with incorrect TINs are in § 301.6724-1(f).

The preamble to the section 6055 regulations (T.D. 9660, 79 FR 13220) provides short-term relief from reporting penalties for 2015 coverage. Specifically, the IRS will not impose penalties under sec-

tions 6721 and 6722 on reporting entities that can show that they have made good faith efforts to comply with the information reporting requirements. This relief applies to incorrect or incomplete information, including TINs or dates of birth, reported on a return or statement.

## **Explanation of Provisions and Summary of Comments**

### *1. Reporting of Catastrophic Plans*

Under § 1.36B-5(a), Exchanges must report to the IRS information relating to qualified health plans in which individuals enroll through the Exchange. Under section 36B(c)(3)(A), the term qualified health plan has the same meaning as defined in section 1301 of the Affordable Care Act except that it does not include a catastrophic plan described in section 1302 of the Affordable Care Act. Thus, Exchanges are not required to report on catastrophic coverage. Section 1.6055-1(d) provides that health insurance issuers need not report on coverage in a qualified health plan in the individual market enrolled in through an Exchange, because that information is generally reported by Exchanges pursuant to § 1.36B-5. Thus, currently neither the Exchanges nor health insurance issuers are responsible for reporting coverage under a catastrophic plan.

Effective administration of section 5000A generally requires reporting of all minimum essential coverage, including catastrophic plans in which individuals enroll through an Exchange. Accordingly, Notice 2015-68 indicated that the Treasury Department and the IRS intended to propose regulations under section 6055 to narrow the relief provided to issuers in § 1.6055-1(d) by requiring issuers of catastrophic plans to report catastrophic plan coverage on Form 1095-B, effective for coverage in 2016 and returns and statements filed and furnished in 2017. Consistent with Notice 2015-68, the proposed regulations include this requirement but, to allow reporting entities sufficient time to implement these reporting requirements, are proposed to be effective for coverage in 2017 and returns and statements filed and furnished in 2018.

Notice 2015-68 indicated that health insurance issuers could voluntarily report

on 2015 catastrophic coverage (on returns and statements filed and furnished in 2016) and were encouraged to do so. Notice 2015-68 further provided that an issuer that reports on 2015 catastrophic coverage will not be subject to penalties for these returns. Given the 2017 effective date for reporting of catastrophic coverage provided in these proposed regulations, health insurance issuers similarly may voluntarily report on 2016 catastrophic coverage (on returns and statements filed and furnished in 2017) and are encouraged to do so. An issuer that reports on 2016 catastrophic coverage will not be subject to penalties for these returns.

### *2. Reporting of Coverage under Basic Health Programs*

Section 1331 of the Affordable Care Act allows states to establish a Basic Health Program to provide an additional healthcare coverage option to certain individuals not eligible for Medicaid. See 42 CFR Part 600. The Basic Health Program is designated as minimum essential coverage under 42 CFR 600.5.

Section 5000A(f) does not identify the Basic Health Program as a government-sponsored program, but it closely resembles government-sponsored coverage such as Medicaid and CHIP. Accordingly, Notice 2015-68 indicated that the state agency that administers the Basic Health Program is the entity that must report that coverage under section 6055. Consistent with Notice 2015-68, these proposed regulations provide that the State agency administering coverage under the Basic Health Program is required to report that coverage under section 6055.

### *3. Truncated TINs*

Section 6055(b) and § 1.6055-1(e) require that health insurance issuers and carriers reporting coverage under insured group health plans report information about the employer sponsoring the plan, including the employer's EIN, to the IRS. Section 6055(c) and § 1.6055-1(g) require that health insurance issuers and carriers reporting information to the IRS furnish a statement to a taxpayer providing information about the filer and the covered individuals. Section 301.6109-4(b)(1)

provides that the TIN of a person other than the filer, including an EIN, may be truncated on statements furnished to recipients unless, among other reasons, such truncation is otherwise prohibited by statute or regulations. Thus, under § 1.6055-1(g)(3) of the existing regulations, a recipient's TIN may appear in the form of an IRS truncated taxpayer identification number (TTIN) on a statement furnished to the recipient. These proposed regulations amend the existing regulations to clarify that a TTIN is not an alternative identifying number; rather, it is one of the ways that a TIN may appear, subject to the rules in § 301.6109-4(b)(1).

Existing regulations do not address whether health insurance issuers and carriers are permitted to truncate a sponsoring employer's EIN on statements furnished to taxpayers. Notice 2015-68 advised that the Treasury Department and the IRS intended to propose regulations to clarify that the EIN of the employer sponsoring the plan may be truncated to appear as an IRS TTIN on statements health insurance issuers and carriers furnish to taxpayers. Consistent with Notice 2015-68, the proposed regulations clarify that the EIN of the employer sponsoring the plan may be truncated to appear as an IRS TTIN on statements health insurance issuers and carriers furnish to taxpayers. Section 301.6109-4(b)(2)(ii) prohibits using TTINs if, among other things, a statute specifically requires the use of an EIN. While section 6055(b)(2)(A) requires that the information return filed with the IRS includes the employer's EIN, and section 6055(c)(1)(B) requires that the statement furnished to a taxpayer includes the information required to be shown on the information return with respect to such individual, the statute does not require that the full EIN appear on the statement furnished to taxpayers and the employer's EIN may be truncated to appear in the form of an IRS TTIN.

#### *4. Plans for Which Reporting is Not Required*

Information reporting under section 6055(a) is generally required of every person who provides minimum essential coverage to an individual during the year. In certain instances where the reporting

would be duplicative, the existing regulations allow the person who provides supplemental coverage to forgo information reporting. This supplemental coverage rule in § 1.6055-1(d)(2) was intended to eliminate duplicate reporting of an individual's minimum essential coverage under circumstances when there is reasonable certainty that the provider of the "primary" coverage will report. This rule has proven to be confusing.

The Treasury Department and the IRS indicated in Notice 2015-68 that regulations would be proposed to replace the existing rules. Accordingly, the proposed regulations provide that (1) if an individual is covered by more than one minimum essential coverage plan or program provided by the same reporting entity, reporting is required for only one of the plans or programs; and (2) reporting is not required for an individual's minimum essential coverage to the extent that the individual is eligible for that coverage only if the individual is also covered by other minimum essential coverage for which section 6055 reporting is required. As in Notice 2015-68, the proposed regulations provide that the second rule applies to eligible employer-sponsored coverage only if the supplemental coverage is offered by the same employer that offered the eligible employer-sponsored coverage for which section 6055 reporting is required. These rules apply month by month and individual by individual.

Thus, under the proposed regulations, applying the first rule, if for a month an individual is enrolled in a self-insured group health plan provided by an employer and also is enrolled in a self-insured health reimbursement arrangement (HRA) provided by the same employer, the reporting entity (the employer) is required to report only one type of coverage for that individual. If an employee is covered under both self-insured arrangements for some months of the year but retires or otherwise drops coverage under the non-HRA group health plan and is covered only under the HRA for other months, the employer must report coverage under the HRA for the months after the employee retires or drops the non-HRA coverage.

Applying the second rule, reporting is not required for minimum essential cov-

erage for a month if that coverage is offered only to individuals who are also covered by other minimum essential coverage, including Medicare, TRICARE, Medicaid, or certain employer-sponsored coverage, for which reporting is required. In these arrangements, the program for which reporting is required represents the primary coverage while the other minimum essential coverage is supplemental to the primary plan.

Under the application of the second rule to eligible employer-sponsored coverage, if an employer offers both an insured group health plan and an HRA for which an employee is eligible if enrolled in the insured group health plan, and an employee enrolls in both, the employer is not required to report the employee's coverage under the HRA. However, if an employee is enrolled in his or her employer's HRA and in a spouse's non-HRA group health plan, the employee's employer is required to report for the HRA, and the employee's spouse's employer (or the health insurance issuer or carrier, if the plan is insured) is required to report for the non-HRA group health plan coverage. The proposed regulations clarify that, for purposes of this rule, an employer is treated as offering minimum essential coverage that is offered by another employer with whom the employer is treated as a single employer under section 414(b), (c), (m), or (o).

Separately, Notice 2015-68 also stated that, because Medicaid and CHIP coverage provided by the governments of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands is generally made available only to individuals who are treated as having minimum essential coverage under section 5000A(f)(4) (and, therefore, do not need section 6055 reporting to verify minimum essential coverage), the Medicaid and CHIP agencies in those U.S. possessions or territories are not required to report that coverage under section 6055. Consistent with that rule, the proposed regulations provide that reporting under section 6055 is not required with respect to Medicaid and CHIP agencies in U.S. possessions or territories.



## 5. TIN Solicitation

Information reporting under section 6055 is subject to the penalty provisions of sections 6721 and 6722 for failure to file timely a correct information return or failure to furnish timely a correct statement to the individual. See § 1.6055-1(h). The penalties may be waived under section 6724(a) if the failure is due to reasonable cause and not due to willful neglect; that is, if a reporting entity demonstrates that it acted in a responsible manner and that the failure is due to significant mitigating factors or events beyond the reporting entity's control. See § 301.6724-1(a)(2). Under § 301.6724-1(e), in cases of a missing TIN, the reporting entity is treated as acting in a responsible manner in soliciting a TIN if the reporting entity makes (1) an initial solicitation when an account is opened or a relationship is established, (2) a first annual solicitation by December 31 of the year the account is opened (or January 31 of the following year if the account is opened in December), and (3) a second annual solicitation by December 31 of the year following the year in which the account is opened. Similar rules apply regarding incorrect TINs under § 301.6724-1(f). The rules in § 301.6724-1(e) and (f) were issued prior to the enactment of section 6055 and apply to most forms of information reporting.

Comments received in response to the first notice of proposed rulemaking (REG-132455-11) under section 6055, published in the **Federal Register** (78 FR 54986) on September 9, 2013, raised concerns about the application of the TIN solicitation rules to section 6055 reporting. Accordingly, Notice 2015-68 provided that, pending the issuance of additional guidance, reporting entities will not be subject to penalties for failure to report a TIN if they comply with the requirements of § 301.6724-1(e) with the following modifications: (1) the initial solicitation is made at an individual's first enrollment or, if already enrolled on September 17, 2015, the next open season, (2) the second solicitation (the first annual solicitation) is made at a reasonable time thereafter, and (3) the third solicitation (the second annual solicitation) is made by December 31 of the year following the

initial solicitation. Notice 2015-68 also requested comments on the application of the reasonable cause rules under section 6724 to section 6055 reporting.

In response to the request for comments in Notice 2015-68, one commenter requested that the proposed regulations include detailed rules tailored to TIN solicitation for information returns required by section 6055. This commenter expressed concern that, because the current rules were designed primarily to apply to financial relationships, they are difficult to apply to section 6055 reporting, particularly the rules for demonstrating that the filer acted in a responsible manner as described in § 301.6724-1(e) and (f). The Treasury Department and the IRS agree with the commenter that some modification to the rules in § 301.6724-1(e) is warranted to account for the differences between information reporting under section 6055 and information reporting under other provisions of the Code. Accordingly, the Treasury Department and the IRS propose regulations to provide specific TIN solicitation rules for section 6055 reporting. Until final regulations are released, reporting entities may rely on these proposed rules and Notice 2015-68. The preamble below also includes some additional transition rules that apply to reporting entities in certain situations.

Section 301.6724-1(e)(1)(i) provides that an initial TIN solicitation must occur when an account (which includes accounts, relationships, and other transactions) is opened. Section 301.6724-1(e) does not define the term "opened" for this purpose. Commenters requested clarification as to how the term "opened" should be interpreted for purposes of reporting under section 6055. In the context of financial accounts, an account is generally considered opened on the first day it is available for use by its owner. In most cases, this would be shortly after the application to open that account is received, and this day would be no earlier than the day the application was received. Health coverage does not work in the same way. In some cases, the first effective date of health coverage is before the day the application was received, making it impractical to solicit TINs before the coverage takes effect. In other cases, the effective date of coverage may be months after the

day the application was received. To account for this different timing, the proposed regulations provide that, for purposes of section 6055 reporting, an account is considered "opened" on the date the filer receives a substantially complete application for new coverage or to add an individual to existing coverage. Accordingly, health coverage providers may generally satisfy the requirement for the initial solicitation by requesting enrollees' TINs as part of the application for coverage.

To address differences in the way financial accounts and health coverage are opened, the proposed regulations also change the timing of the first annual solicitation (the second solicitation overall) with respect to missing TINs. Under § 301.6724-1(e)(1)(ii), a first annual solicitation must be made by December 31 of the year the account is opened (or by January 31 of the following calendar year if the account is opened in December). The timing of the first annual solicitation is dictated by the need to have accurate reporting of information to taxpayers and the IRS in preparation for the filing of an income tax return. Accounts, relationships, and other transactions may be opened or begun throughout the year, and may remain active indefinitely. It is beneficial to the IRS, filers, and taxpayers in the context of accounts, relationships, and other transactions to have a single deadline for the first annual solicitation at the end of the calendar year (or January if the account is opened in December).

By contrast, health coverage is generally offered on an annual basis. While individuals may, depending on their circumstances, enroll in coverage at any point during the year, many covered individuals enroll in coverage during the open enrollment period, which is in advance of the beginning of the coverage year. The most common coverage year is the calendar year and many individuals enroll late each year for coverage the following year. For such individuals, requiring the first annual solicitation (the second solicitation overall) by December 31 of the year in which the application is received is earlier than is necessary (because reporting is not due until more than a year later) and coincides with the end of a plan year, which is already the busiest time of year for

coverage providers. To address these considerations, the proposed regulations require that the first annual solicitation be made no later than seventy-five days after the date on which the account was “opened” (i.e., the day the filer received the substantially complete application for coverage), or, if the coverage is retroactive, no later than the seventy-fifth day after the determination of retroactive coverage is made. The deadline for the second annual solicitation (third solicitation overall) remains December 31 of the year following the year the account is opened as required by § 301.6724–1(e)(1)(iii).

As noted above, taxpayers may rely on these proposed regulations and on Notice 2015–68 until final regulations are published. To provide additional relief and ensure that the requirements for the first annual and second annual solicitations may be satisfied with respect to individuals already enrolled in coverage, an additional rule is provided. Under this rule, if an individual was enrolled in coverage on any day before July 29, 2016, the account is considered opened on July 29, 2016. Accordingly, reporting entities have satisfied the requirement for the initial solicitation with respect to already enrolled individuals so long as they requested enrollee TINs either as part of the application for coverage or at any other point before July 29, 2016. The deadlines for the first and second annual solicitations are set by reference to the date the account is opened. Thus, the rule above that treats all accounts for individuals currently enrolled in coverage for which a TIN has not been provided as opened on July 29, 2016, provides additional time for the annual solicitations as well. Specifically, consistent with Notice 2015–68, the first annual solicitation should be made at a reasonable time after July 29, 2016. For this purpose, a reporting entity that makes the first annual solicitation within 75 days of the initial solicitation will be treated as having made the second solicitation within a reasonable time. Reporting entities that have not made the initial solicitation before July 29, 2016 should comply with the first annual solicitation requirement by making a solicitation within a

reasonable time of July 29, 2016. Notice 2015–68 also provided that a reporting entity is deemed to have satisfied the initial, first annual, and second annual solicitations for an individual whose coverage was terminated prior to September 17, 2015, and taxpayers may continue to rely on this rule as well.

Section 301.6724–1(e)(1)(v) provides that the initial and first annual solicitations relate to failures on returns filed for the year in which the account is opened (meaning that showing reasonable cause with respect to the year the account is opened generally requires making the initial and first annual solicitations in the year the account is opened). Because these proposed regulations provide that an account is considered opened for section 6055 purposes when a substantially complete application for that account is received, an account would, in some cases, be considered open in a year prior to the year for which coverage is actually effective and for which reporting is required. This would occur, for example, when a reporting entity receives an application during open enrollment for coverage effective as of the first day of the next coverage year. To ensure that reporting entities that make the initial solicitation and first annual solicitation are eligible for relief for the first year for which reporting is required, the proposed regulations provide that, for purposes of reporting under section 6055, the initial and first annual solicitations relate to failures on returns required to be filed for the year that includes the day that is the first effective date of coverage for a covered individual. Similarly, § 301.6724–1(e)(1)(v) provides that the second annual solicitation relates to failures on returns filed for the year immediately following the year in which the account is opened and succeeding calendar years (meaning that showing reasonable cause with respect to years after the account is opened generally requires making the second annual solicitation during the year following the year the account is opened). As with the initial and first annual solicitations, the existing rule under § 301.6724–1(e)(1)(v) could provide relief for the wrong year when com-

bined with the proposed definition of account opening under section 6055. Accordingly, the proposed regulations provide that the second annual solicitation relates to failures on returns filed for the year immediately following the year to which the first annual solicitation relates, and succeeding calendar years.

In contrast to missing TINs, the Treasury Department and the IRS do not recognize a similar need to modify the existing first annual solicitation rules for incorrect TINs in § 301.6724–1(f)(1)(ii). As with many other types of information reports, information reports of health coverage are generally filed after the end of the tax year, and thus, it is only after the tax year that a filer would generally receive notice of an incorrect TIN. Because the end of the tax year typically corresponds with the end of the coverage year, there is no reason to distinguish the timing of the correction of incorrect TINs for health coverage from all other types of accounts for which information reporting is required. Consequently, the proposed regulations do not alter the rules for incorrect TINs in § 301.6724–1(f)(1)(ii) and (iii) as applied to information reporting under section 6055. However, as with the rules regarding missing TINs under § 301.6724–1(e)(1)(ii), the rules regarding incorrect TINs in § 301.6724–1(f)(1)(i) make reference to the time an account is “opened.” Accordingly, the proposed regulations, which provides that for purposes of section 6055 reporting an account is considered “opened” at the time the filer receives an application for new coverage or to add an individual to existing coverage, also applies for purposes of the initial solicitation for incorrect TINs in § 301.6724–1(f)(1)(i).<sup>2</sup>

*a. Application of the TIN Solicitation Rules to “Responsible Individuals” and “Covered Individuals”*

A commenter requested clarification that the initial and annual solicitations of § 301.6724–1(e)(1)(i) and (ii) need be made only to the responsible individual for all individuals covered under a single policy. The commenter further suggested

<sup>2</sup>A filer of the information return required under § 1.6055–1 may receive an error message from the IRS indicating that a TIN and name provided on the return do not match IRS records. An error message is neither a Notice 972CG, Notice of Proposed Civil Penalty, nor a requirement that the filer must solicit a TIN in response to the error message.

that TIN solicitations made to a responsible individual be treated as TIN solicitations made to all individuals named on the responsible individual's policy.

Under § 1.6055-1(e)(1)(ii) and (iii), filers must report the TIN of each covered individual (who, under § 301.6721-1(g)(5), are also "payees"), and § 1.6055-1(g)(1) requires that the TIN of each covered individual be shown on statements furnished to the responsible individual. Current § 1.6055-1(g)(1) provides that, for purposes of the penalties under section 6722, the furnishing of a statement to the responsible individual is treated as the furnishing of a statement to a covered individual. This rule is intended to allow reporting entities to satisfy the section 6722 requirements for all covered individuals by furnishing the required statement only to the responsible individual. The Treasury Department and the IRS also intend for a similar rule to apply to the TIN solicitation rules under the section 6724 regulations. To clarify that this is how these rules apply, the proposed regulations expressly provide that TIN solicitations (both initial and annual) made to the responsible individual for a policy or plan are treated as TIN solicitations of every covered individual on the policy or plan for purposes of § 301.6724-1(e)(1) and (f)(1). The filer does not need to make separate solicitations from the responsible individual for each covered individual nor does it need to separately solicit the TINs of each covered individual by contacting each covered individual directly. However, we decline to adopt the commenter's suggestion that a TIN solicitation made to a responsible individual be treated as a TIN solicitation made to all individuals named on that responsible individual's policy at any time, including those individuals added to a policy after the TIN solicitations. When a new individual is added to a policy, the coverage provider establishes a relationship with that individual. The individual is new to the filer, and it is the filer's responsibility to solicit that individual's TIN. Accordingly, to qualify for the penalty waiver, filers must solicit TINs for each individual added to a policy under the procedures outlined in § 301.6724-1(e)(1)(i) and (f)(1)(i); however, any other individual for whom the filer already has a TIN or already has

solicited a TIN the prescribed amount of times need not be solicited again regardless of what changes take place during the filer's coverage of that individual.

#### b. *Different Forms of TIN Solicitations*

A commenter to Notice 2015-68 requested that the provision of renewal applications to enrollees be permitted to satisfy the annual solicitation requirement for purposes of § 301.6724-1(e)(1)(ii) and (iii) and (f)(1)(ii) and (iii) if those renewal applications request TINs from covered individuals. Under current law, TIN requests may be made in a number of different formats. The provision of a renewal application that requests TINs for all covered individuals satisfies the annual solicitation provisions of § 301.6724-1(e)(1)(ii) and (iii) and (f)(1)(ii) and (iii) if it is sent by the deadline for those annual solicitations. Thus, no changes to the regulations are necessary for renewal applications to satisfy the annual solicitation requirement.

The same commenter requested that the requirement in § 301.6724-1(e)(2)(i)(B) to provide the responsible individual with a Form W-9 should be eliminated. The commenter was concerned that this requirement imposes burdens on responsible individuals that make it less likely that they will respond to a TIN solicitation. Section 301.6724-1(e)(2)(i)(B) requires that an annual solicitation include a "Form W-9 or an acceptable substitute . . ." Thus, the existing regulations do not require that Form W-9 be sent. Filers are allowed to request TINs on an acceptable substitute for Form W-9, which includes a renewal application or other request for a TIN. Thus, this comment is not adopted.

This commenter also requested that the requirement in § 301.6724-1(e)(2)(i)(C) that annual solicitations include a return envelope be eliminated, and, if not eliminated, that clarification be provided as to how this requirement applies to multiple TINs. Existing regulations include this requirement because individuals are more likely to comply with a TIN solicitation if that solicitation includes a return envelope. We see no reason that the requirement to include a return envelope, which exists for other information reporting pro-

visions, should be removed for reporting under section 6055. Thus, the proposed regulations do not adopt this comment. However, filers may request more than one TIN at the same time and do not need to send separate envelopes with each request. For example, on a renewal application requesting the TINs for all covered individuals, filers need only provide one return envelope for that application or request.

#### c. *Solicitations by Employers*

A commenter requested that employers be permitted to make TIN solicitations on behalf of filers. The commenter offered that employers are frequently in a better position than coverage providers to request TINs from the employers' employees and the employees' dependents, and, for practical reasons, it would make sense to allow employers to step in the shoes of the coverage provider for purposes of making the solicitations under § 301.6724-1(e)(1) and (f)(1).

Under existing regulations, actions taken by employers may satisfy the requirement for making an initial or annual TIN solicitation. Employers may, for example, provide their employees with applications for health coverage. If these applications request that the applicants provide TINs for all individuals to be covered, the coverage provider has made an initial solicitation for these individuals' TINs.

The commenter further requested that a filer that arranges to have an employer take on responsibility for the TIN solicitations be treated as having met the penalty waiver requirements of § 301.6724-1(e)(1) and (f)(1). Under existing regulations, qualifying for a penalty waiver requires that the solicitations actually be made. To avoid creating a less stringent standard in cases where an employer is acting on the filer's behalf, the proposed regulations do not adopt the commenter's proposal.

#### d. *Electronic TIN Solicitations*

A commenter requested that filers be permitted to make annual TIN solicitations by electronic means if the responsible individual has consented to the receipt



of information concerning his or her coverage in the same electronic format in which the annual solicitation is made. IRS Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs (including instructions for reading CD/DVDs), provides that filers may establish an electronic system for payees (including covered individuals) to receive and respond to TIN solicitations, provided certain listed requirements are met. IRS Publication 1586 can be found at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs). Because filers are already able to solicit TINs electronically, it is unnecessary to address the commenter's recommendation for electronic TIN solicitations with these proposed regulations.

### Proposed Effective/Applicability Date

These regulations are generally proposed to apply for taxable years ending after December 31, 2015, and may be relied on for calendar years ending after December 31, 2013.

The only exception is the rules in section 1 of this preamble relating to reporting of coverage under catastrophic plans. Those rules are proposed to apply for calendar years beginning after December 31, 2016. Health insurance issuers may voluntarily report on 2015 and 2016 catastrophic coverage (on returns and statements filed and furnished in 2016 and 2017 respectively). An issuer that reports on 2015 and/or 2016 catastrophic coverage will not be subject to penalties for these returns.

In addition, until these the proposed regulations are finalized, taxpayers may continue to rely on the rules provided in Notice 2015-68.

### Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the information collection required under these regulations is imposed under section 6055. Consistent with the statute, the proposed regulations require a person that provides minimum essential coverage to an individual to file a return with the IRS reporting certain information and to furnish a statement to the responsible individual who enrolled an individual or family in the coverage. These regulations primarily provide the method of filing and furnishing returns and statements under section 6055. Moreover, the proposed regulations attempt to minimize the burden associated with this collection of information by limiting reporting to the information that the IRS will use to verify minimum essential coverage and administer tax credits.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection at [www.irs.gov](http://www.irs.gov)

regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is John B. Lovelace of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805\* \* \*

Par. 2. Section 1.6055-1 is amended by:

1. Adding paragraphs (b)(13) and (14).
2. Redesignating paragraph (c)(1)(iv) as (c)(1)(v) and adding a new paragraph (c)(1)(iv).
3. Revising paragraphs (d)(1) and (2).
4. Redesignating paragraph (d)(3) as (d)(5) and adding a new paragraph (d)(3).
5. Adding paragraphs (d)(4) and (6).
6. Revising paragraph (g)(3).
7. Revising paragraph (h)(1).
8. Adding paragraph (h)(3).
9. Revising paragraph (j).

The revisions and additions read as follows:

*§ 1.6055-1 Information reporting for minimum essential coverage.*

\* \* \* \* \*

(b) \* \* \*

(13) *Catastrophic plan.* The term catastrophic plan has the same meaning as in section 1302(e) of the Affordable Care Act (42 U.S.C. 18022(e)).

(14) *Basic health program.* The term basic health program means a basic health program established under section 1331 of

the Affordable Care Act (42 U.S.C. 18051).

(c) \* \* \*

(1) \* \* \*

(iv) The state agency that administers a Basic Health Program;

\* \* \* \* \*

(d) *Reporting not required*—(1) *Qualified health plans*. Except for coverage under a catastrophic plan, a health insurance issuer is not required to file a return or furnish a report under this section for coverage in a qualified health plan in the individual market enrolled in through an Exchange.

(2) *Duplicative coverage*. If an individual is covered for a month by more than one minimum essential coverage plan or program provided by the same reporting entity, reporting is required for only one of the plans or programs for that month.

(3) *Supplemental coverage*. Reporting is not required for minimum essential coverage of an individual for a month if that individual is eligible for that coverage only if enrolled in other minimum essential coverage for which section 6055 reporting is required and is not waived under this paragraph (d)(3). This paragraph (d)(3) applies with respect to eligible employer-sponsored coverage only if the supplemental coverage is offered by the same employer that offered the eligible employer-sponsored coverage for which reporting is required. For this purpose, an employer is treated as offering minimum essential coverage offered by any other person that is a member of a controlled group of entities under section 414(b) or (c), an affiliated service group under section 414(m), or an entity in an arrangement described under section 414(o) of which the employer is also a member.

(4) *Certain coverage provided by Territories and Possessions*. The agencies that administer Medicaid and the Children's Health Insurance Program in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands are not required to report that coverage under section 6055.

\* \* \* \* \*

(6) *Examples*. The following examples illustrate the rules of this paragraph (d).

*Example 1*. Upon being hired, Taxpayer A enrolls in a self-insured major medical group health plan and a health reimbursement arrangement (HRA), both offered by A's employer, V. Both the group health plan and the HRA are minimum essential coverage, and V is the reporting entity for both. Because V is the reporting entity for both the self-insured major medical group health plan and the HRA, under paragraph (d)(2) of this section V must report under paragraph (a) of this section for either its self-insured major medical group health plan or its HRA for A for the months in which A is enrolled in both plans.

*Example 2*. Taxpayer B is enrolled in an insured employer-sponsored group health plan offered by B's employer, W. B is also covered by an HRA offered by W. Under the terms of the HRA, B is eligible for the HRA because B is enrolled in W's insured employer-sponsored group health plan. W's insured employer-sponsored group health plan is minimum essential coverage and, under paragraphs (a) and (c)(1)(i) of this section, the issuer of the insured employer-sponsored group health plan must report coverage under the plan. Therefore, for the months in which B is enrolled in both plans, under paragraph (d)(3) of this section, W does not need to report the HRA for B because the issuer is required to report on coverage for B in the insured employer-sponsored group health plan offered by W for those months.

*Example 3*. Taxpayer C enrolls in a Medicare Savings Program administered by X, a state Medicaid agency, which provides financial assistance with Medicare Part A premiums. Only individuals enrolled in Medicare Part A are offered coverage in this Medicare Savings Program. Medicare Part A is government-sponsored minimum essential coverage and, under paragraphs (a) and (c)(1)(iii) of this section, Medicare must report coverage under the program. Therefore, under paragraph (d)(3) of this section, X does not need to report under paragraph (a) of this section for C's coverage under the Medicare Savings Program.

*Example 4*. Taxpayer E obtains a Medicare supplemental insurance (Medigap) policy that provides financial assistance with costs not covered by Medicare Part A from Z, a health insurance issuer. Only individuals enrolled in Medicare Part A are offered coverage under this Medigap policy. Medicare Part A is minimum essential coverage and, under paragraphs (a) and (c)(1)(iii) of this section, Medicare is required to report E's coverage under Medicare Part A. Therefore, under paragraph (d)(3) of this section, Z does not need to report E's coverage under the Medigap policy.

*Example 5*. Taxpayer F is covered by an HRA offered by F's employer, P. F is also enrolled in a non-HRA group health plan that is self-insured and sponsored by F's spouse's employer, Q. P and Q are not treated as one employer under section 414(b), (c), (m), or (o). Under the terms of the HRA, F is eligible for the HRA only because F is enrolled in a non-HRA group health plan, which in this case is the group health plan offered by Q. However, because the HRA and the non-HRA group health plan are offered by different employers, paragraph (d)(3) of this section does not apply. Accordingly, under paragraphs (a) and (c)(2)(i)(A) of this section, P must report F's enrollment in the HRA, and Q must report F's (and F's spouse's) enrollment in the non-HRA group health plan.

\* \* \* \* \*

(g) \* \* \*

(3) *Form of the statement*. A statement required under this paragraph (g) may be made either by furnishing to the responsible individual a copy of the return filed with the Internal Revenue Service or on a substitute statement. A substitute statement must include the information required to be shown on the return filed with the Internal Revenue Service and must comply with requirements in published guidance (see § 601.601(d)(2) of this chapter) relating to substitute statements. An individual's identifying number may be truncated to appear in the form of an IRS truncated taxpayer identification number (TTIN) on the statement furnished to the responsible individual. The identifying number of the employer may also be truncated to appear in the form of a TTIN on the statement furnished to the responsible individual. For provisions relating to the use of TTINs, see § 301.6109-4 of this chapter (Procedure and Administration Regulations).

\* \* \* \* \*

(h) \* \* \*(1) *In general*. For provisions relating to the penalty for failure to file timely a correct information return required under section 6055, see section 6721 and the regulations under that section. For provisions relating to the penalty for failure to furnish timely a correct statement to responsible individuals required under section 6055, see section 6722 and the regulations under that section. See section 6724, and the regulations thereunder, and paragraph (h)(3) of this section for provisions relating to the waiver of penalties if a failure to file or furnish timely or accurately is due to reasonable cause and not due to willful neglect.

\* \* \* \* \*

(3) *Application of section 6724 waiver of penalties to section 6055 reporting*—(i) *In general*. Paragraphs (e) and (f) of § 301.6724-1 of this chapter, as modified by this paragraph (h)(3), apply to reasonable cause waivers of penalties under sections 6721 and 6722 for failure to file timely or accurate information returns or to furnish individual statements required to be filed or furnished under section 6055.

(ii) *Account opened*. For purposes of section 6055 reporting and the solicitation rules contained in paragraphs (i), (ii), (iii), and (v) of § 301.6724-1(e)(1) of this chapter and paragraph (i) of § 301.6724-



1(f)(1) of this chapter, an account is considered opened at the time the reporting entity receives a substantially complete application for coverage (including an application to add an individual to existing coverage) from or on behalf of an individual for whom the reporting entity does not already provide coverage.

(iii) *First annual solicitation deadline for missing TINs.* In lieu of the deadline for the first annual solicitation contained in paragraph (ii) of § 301.6724–1(e)(1) of this chapter, the first annual solicitation must be made on or before the seventy-fifth day after the date on which an account is opened (or, in the case of retroactive coverage, the seventy-fifth day after the determination of retroactive coverage is made). The period from the date on which the reporting entity receives an application for coverage to the last day on which the first annual solicitation may be made is the first annual solicitation period.

(iv) *Failures to which a solicitation relates—(A) Missing TIN.* For purposes of reporting under section 6055 and the solicitation rules contained in paragraph (1) of § 301.6724–1(e) of this chapter, the initial and first annual solicitations relate to failures on returns required to be filed for the year which includes the first effective date of coverage for a covered individual. The second annual solicitation relates to failures on returns filed for the year immediately following the year to which the first annual solicitation relates and for succeeding calendar years.

(B) *Incorrect TIN.* For purposes of reporting under section 6055 and the solicitation rules contained in paragraph (i) of § 301.6724–1(f)(1) of this chapter, the initial solicitation relates to failures on returns required to be filed for the year which includes the first effective date of coverage for a covered individual.

(v) *Solicitations made to responsible individual.* For purposes of reporting under section 6055 and the solicitation rules contained in § 301.6724–1(e) and (f) of this chapter, an initial or annual solicitation made to the responsible individual is treated as a solicitation made to a covered individual.

\* \* \* \* \*

(j) *Applicability date—*(1) Except as provided in paragraphs (j)(2) and (3) of this section, this section applies for calendar years ending after December 31, 2014.

(2) Paragraphs (b)(14), (c)(1)(v), (d)(2) through (6), and (g)(3) of this section apply to calendar years ending after December 31, 2015. Paragraphs (d)(2), (d)(3), and (g)(3) of § 1.6055–1 as contained in 26 CFR part 1 edition revision as of April 1, 2016, apply to calendar years ending after December 31, 2014 and beginning before January 1, 2016.

(3) Paragraphs (b)(13) and (d)(1) of this section apply to calendar years beginning after December 31, 2016. Paragraph (d)(1) of § 1.6055–1 as contained in 26 CFR part 1 edition revised as of April 1, 2016, applies to calendar years ending after December 31, 2015 and beginning before January 1, 2017.

#### PART 301 — PROCEDURE AND ADMINISTRATION

Par. 3. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 4. Section 301.6724–1 is amended by adding a sentence to the end of paragraph (e)(1)(vi)(A) to read as follows:

§ 301.6724–1 *Reasonable cause.*

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(vi) *Exceptions and limitations.* (A) \* \* \*  
\* See § 1.6055–1(h)(3) of this chapter, which provides rules on the time, form, and manner in which a TIN must be provided for information returns required to be filed and individual statements required to be furnished under section 6055.

\* \* \* \* \*

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on July 29, 2016, 11:15 a.m., and published in the issue of the Federal Register for August 2, 2016, 81 F.R. 50671)

## Notice of Proposed Rulemaking and Notice of Public Hearing Reporting for Qualified Tuition and Related Expenses Education Tax Credits

### REG–131418–14

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that revise the rules for reporting qualified tuition and related expenses under section 6050S on a Form 1098–T, “Tuition Statement,” and confirms the regulations to the changes made to section 6050S by the Protecting Americans from Tax Hikes Act of 2015. This document also seeks to amend the regulations on the education tax credits under section 25A generally as well as to conform the regulations to changes made to section 25A by the Trade Preferences Extension Act of 2015 and the Protecting Americans from Tax Hikes Act of 2015. The proposed regulations affect certain higher educational institutions required to file Form 1098–T and taxpayers eligible to claim an education tax credit. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 31, 2016. Outlines of topics to be discussed at the public hearing scheduled for November 30, 2016 must be received by October 31, 2016.

ADDRESSES: Send submissions to: CC: PA:LPD:PR (REG–131418–14), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–131418–14), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electron-

ically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-131418-14).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Gerald Semasek of the Office of Associate Chief Counsel (Procedure and Administration) for the proposed regulations under sections 6050S and 6724, (202) 317-6845, and Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) for the proposed regulations under section 25A, (202) 317-4718; concerning the submission of comments and requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget through Form 1040 (OMB No. 1545-0074), Form 8863 (OMB No. 1545-0074) and Form 1098-T (OMB No. 1545-1574) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Notice and an opportunity to comment on the proposed changes to burden hours for the forms related to this proposed rule will be published in a separate notice in the **Federal Register**.

### **Background**

This document contains proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under section 25A of the Internal Revenue Code (Code) and the Procedure and Administration Regulations (26 CFR Part 301) under section 6050S, to reflect the amendments to sections 25A and 6724 under the Trade Preferences Extension Act of 2015 (Public Law 114-27 (129 Stat. 362 (2015))) (TPEA) and the amendments to sections 25A and 6050S under the Protecting Americans from Tax Hikes Act of 2015 (Public Law 114-113 (129 Stat. 2242 (2015))) (PATH). Furthermore, the document contains proposed regulations to amend the Income Tax Regulations under section 25A to update the definition of qualified tuition and related expenses in § 1.25A-2(d) to reflect the changes made

by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5 (123 Stat. 115) (ARRA)), to clarify the prepayment rule in § 1.25A-5(e), and to clarify the rule for refunds in § 1.25A-5(f).

#### *1. Section 25A-Education Tax Credits*

The Taxpayer Relief Act of 1997 (Public Law 105-34 (111 Stat. 788) (TRA '97)) added section 25A to provide students and their families with two new nonrefundable tax credits to help pay for college (education tax credits). Pursuant to TRA '97, section 25A allowed eligible taxpayers to claim either the Hope Scholarship Credit or the Lifetime Learning Credit (LLC) for qualified tuition and related expenses paid during the taxable year for an academic period beginning during the taxable year. In general, either the student or the parent who claims a dependency exemption for the student may claim a credit for the student's qualified tuition and related expenses. Section 25A(f)(1) defines "qualified tuition and related expenses" as tuition and fees required for enrollment or attendance at an eligible educational institution (institution). Section 25A(f)(2) generally defines an "eligible educational institution" as an institution described in the Higher Education Act of 1965 that is eligible to participate in federal college financial aid programs. Section 25A(g)(4) provides that amounts paid during the taxable year for enrollment during an academic period beginning within the first three months of the following taxable year are treated as amounts paid for an academic period beginning during the taxable year. Section 25A(g)(5) provides that no credit is allowed for any expenses for which a deduction is allowed under another provision of the Code.

Final regulations under section 25A were published in the **Federal Register** (67 FR 78687) on December 26, 2002. Section 1.25A-2(d)(1) of these regulations defines "qualified tuition and related expenses" to mean tuition and fees required for the enrollment or attendance of a student for courses of instruction at an institution. Section 1.25A-2(d)(2)(i) provides that only fees required to be paid to the institution as a condition of the student's enrollment or attendance at the in-

stitution are treated as qualified tuition and related expenses for purposes of section 25A. Under this rule, fees for books, supplies, and equipment used in a course of study are required fees only if the fees must be paid to the institution for the enrollment or attendance of the student at the institution. See § 1.25A-2(d)(2)(ii). In addition, § 1.25A-5(e)(1) provides that an education tax credit is allowed only for payments of qualified tuition and related expenses for an academic period beginning in the same taxable year as the year the payment is made. Section 1.25A-5(e)(2) provides that qualified tuition and related expenses paid during one taxable year for an academic period beginning in the first three months of the taxable year following the taxable year in which the payment is made will be treated as paid for an academic period beginning in the same taxable year as the year the payment is made (prepayment rule).

Section 1.25A-5(f) provides rules for refunds of qualified tuition and related expenses. If qualified tuition and related expenses are paid and a refund of these expenses is received in the same taxable year, qualified tuition and related expenses for the taxable year are reduced by the amount of the refund. Section 1.25A-5(f)(1). If a taxpayer receives a refund of qualified tuition and related expenses in the current taxable year (current year) that were paid in the prior taxable year (prior year) before the taxpayer files his/her federal income tax return for the prior year, the taxpayer reduces the qualified tuition and related expenses for the prior year by the refund amount. Section 1.25A-5(f)(2). However, if the taxpayer receives the refund after filing his/her federal income tax return for the prior year, the taxpayer must increase the tax imposed for the current year by the recapture amount. Section 1.25A-5(f)(3)(i). The recapture amount is calculated in the manner provided in § 1.25A-5(f)(3)(ii). Sections 1.25A-5(f)(4) and (f)(5) provide that refunds of loan proceeds and receipt of excludable educational assistance are treated as refunds for purposes of § 1.25A-5(f)(1), (2), and (3), as appropriate.

In 2009, ARRA enacted section 25A(i), which expanded the Hope Scholarship Credit with the American Opportu-

nity Tax Credit (AOTC) for taxable years beginning after 2008. The definition of “qualified tuition and related expenses” for purposes of the AOTC is broader than the definition of qualified tuition and related expenses for the Hope Scholarship Credit and the LLC because it includes expenses paid for course materials. See section 25A(i)(3).

### 2. Section 222—Deduction for Qualified Expenses

Section 431(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 38) added section 222, which generally allows a deduction for qualified tuition and related expenses paid by a taxpayer during the taxable year subject to certain dollar and income limitations. Section 222(b) provides that no deduction is allowed if the taxpayer claims an education tax credit for the student.

### 3. Section 6050S—Information Reporting for Eligible Educational Institutions

TRA '97 also added section 6050S to require eligible educational institutions to file information returns and to furnish written statements to assist taxpayers and the IRS in determining whether a taxpayer is eligible for an education tax credit under section 25A, as well as other education tax benefits. These returns and statements are made on Form 1098–T, “Tuition Statement.” Prior to the enactment of PATH, section 6050S(b)(2)(B)(i) permitted institutions to report either the aggregate amount of payments received or the aggregate amount billed for qualified tuition and related expenses during the calendar year for individuals enrolled for any academic period. Institutions also must report the aggregate amount of scholarships or grants received for an individual’s costs of attendance that the institution administered and processed during the calendar year. See section 6050S(b)(2)(B)(ii). Section 6050S(b)(2)(B)(iii) requires that institutions must separately report adjustments (that is, refunds of payments or reductions in charges) made during the calendar year to qualified tuition and related expenses that were reported in a prior calendar year and that

institutions also must separately report adjustments (that is, refunds or reductions) made during the calendar year to scholarships that were reported in a prior calendar year. Section 6050S(b)(2)(D) requires that the information return include other information as the Secretary may prescribe.

In addition, sections 6050S(a)(2) and (a)(3) require any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified expenses (an insurer) or who receives from any individual \$600 or more of interest during the calendar year on qualified education loans to file information returns and to furnish written information statements. Section 6050S(b)(2) provides that these information returns must contain the name, address, and TIN of any individual with respect to whom these payments were made or received, the aggregate amount of reimbursements or refunds (or similar amounts paid to such individuals during the calendar year by an insurer), the aggregate amount of interest received for the calendar year from the individual, and such other information as the Secretary may prescribe.

Section 6050S(d) provides that every person required to make a return under section 6050S(a) must furnish a written statement to each individual whose name is set forth on the return showing the name, address, and phone number of the person required to make the return and the amounts described in section 6050S(b)(2)(B). For taxable years beginning after June 29, 2015, all of the information required by section 6050S(b)(2), not just the amounts, must be included on the written statement. The written statement must be furnished by January 31 of the year following the year for which the return is required to be made.

Final regulations under section 6050S were published in the **Federal Register** (67 FR 77678) in the same Treasury Decision as the final regulations for section 25A on December 19, 2002. The section 6050S regulations provide exceptions to the reporting requirements for educational institutions for students who are nonresident aliens, for noncredit courses, for certain billing arrangements, and in cases where qualified tuition and related ex-

penses are paid entirely with scholarships or grants. These regulations also set forth the specific information that institutions must report to the IRS, as well as information that the institution must include with the statement furnished to the student. These regulations also include requirements regarding the time and manner for soliciting the student’s TIN.

### 4. Sections 6721, 6722 and 6724—Information Reporting Penalties and Penalty Relief

Section 6721 imposes a penalty on an eligible educational institution that fails to timely file correct information returns with the IRS. Section 6722 imposes a penalty on an educational institution that fails to timely furnish correct written statements to the student. Generally, the penalty under section 6721 and section 6722 is \$100 per failure, with an annual maximum penalty of \$1.5 million. The penalty is increased to \$250 per failure and the annual maximum penalty is increased to \$3 million for returns required to be filed and statements required to be made after December 31, 2015. However, section 6724(a) provides that the penalty under section 6721 or 6722 may be waived if it is shown that the failure was due to reasonable cause and not due to willful neglect.

Section 301.6724–1(a)(2) provides that the penalty is waived for reasonable cause only if the filer establishes that: (1) either there are significant mitigating factors with respect to the failure or that the failure arose from events beyond the filer’s control and (2) the filer acted in a responsible manner both before and after the failure. In the case of a missing or incorrect TIN, § 301.6724–1(d)(2) provides that the filer acted in a responsible manner if the filer satisfies the solicitation requirements in § 301.6724–1(e) (regarding a missing TIN) or (f) (regarding an incorrect TIN).

Section 1.6050S–1(e)(3) provides that the rules regarding reasonable cause under § 301.6724–1 do not apply in the case of failure to include a correct TIN on a Form 1098–T. Instead, § 1.6050S–1(e)(3) provides special rules for institutions to establish reasonable cause for a failure to include a correct TIN on Form 1098–T.



Section 1.6050S-1(e)(3)(i) provides that reasonable cause for a failure to include a correct TIN on the Form 1098-T may be established if (1) the failure arose from events beyond the institution's control, such as a failure of the individual to furnish a correct TIN, and (2) the institution acted in a responsible manner before and after the failure. Section 1.6050S-1(e)(3)(ii) provides that if the institution does not have the student's correct TIN in its records, acting in a responsible manner means making a single solicitation for the TIN by December 31 of the calendar year for which the payment is made, the amount is billed, or a reimbursement is made. Section 1.6050S-1(e)(3)(iii) also provides for the manner by which an educational institution should request the individual's TIN. The solicitation must be done in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution. The solicitation may be made on Form W-9S, "Request for Student's or Borrower's Taxpayer Identification Number and Certification," or the institution may develop its own form and incorporate it into other forms customarily used by the institution, such as financial aid forms. In the instance that an institution does not have a student's TIN in its records and the student does not provide the TIN in response to a solicitation described in § 1.6050S-1(e), the institution must file and furnish the Form 1098-T, leaving the space for the TIN blank.

#### 5. TPEA Amendments to Sections 25A, 222 and 6724

Section 804(a) of TPEA amended section 25A by adding a new subparagraph (g)(8), which provides that, for taxable years beginning after June 29, 2015, except as provided by the Secretary, a taxpayer may not claim an education tax credit under section 25A unless the taxpayer receives a statement furnished by an eligible educational institution that contains all of the information required in section 6050S(d)(2) (that is, the recipient's copy of the Form 1098-T). Section 804(b) similarly amends section 222(d) to provide that, for taxable years beginning after June 29, 2015, except as provided by

the Secretary, a taxpayer may not claim a deduction for qualified tuition and related expenses unless the taxpayer receives the recipient's copy of the Form 1098-T. For purposes of both the education tax credit and the deduction, a taxpayer who claims a student as a dependent will be treated as receiving the statement if the student receives the statement.

Section 805 of TPEA amends section 6724 by adding a new subsection (f), which provides that no penalty will be imposed under section 6721 or 6722 against an eligible educational institution solely by reason of failing to include the individual's TIN on a Form 1098-T or related statement if the institution contemporaneously certifies under penalties of perjury in the form and manner prescribed by the Secretary that it has complied with the standards promulgated by the Secretary for obtaining the individual's TIN. The provision applies to returns required to be made and statements required to be furnished after December 31, 2015.

#### 6. PATH Amendments to Sections 25A, 222 and 6050S

##### a. AOTC permanent and section 222 extended

Section 102(a) of PATH amends section 25A(i) to make the AOTC permanent. Section 153(a) of PATH amends section 222(e) to retroactively extend the deduction for qualified tuition and related expenses for taxable years beginning after December 31, 2014, and ending on or before December 31, 2016.

##### b. Amendments to section 25A

Section 206(a)(2) of PATH amends section 25A(i) to provide that the AOTC is not allowed if the student's TIN and the TIN of the taxpayer claiming the credit is issued after the due date for filing the return for the taxable year. Pursuant to section 206(b)(1), this amendment is effective for returns (including an amended return) filed after December 18, 2015. Section 206(b)(2) of PATH provides, however, that this amendment does not apply to any return (other than an amendment to any return) for a taxable year that includes the date of enactment of PATH

(December 18, 2015) if the return is filed on or before the due date for such return.

Section 211(a) of PATH amends section 25A(i) to provide that the AOTC is not allowed if the return does not include the employer identification number (EIN) of any institution to which the qualified tuition and related expenses were paid with respect to the student. This amendment is effective for taxable years beginning after December 31, 2015.

##### c. Amendments to section 6050S

Section 211(b) of PATH amends section 6050S(b)(2) to require eligible educational institutions and insurers to report their EIN on the return and statement. This amendment is effective for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date.

Section 212 of PATH amends section 6050S(b)(2)(B)(i) to eliminate the option for eligible educational institutions to report aggregate qualified tuition and related expenses billed for the calendar year. Accordingly, for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date, eligible educational institutions are required to report aggregate payments of qualified tuition and related expenses received during the calendar year.

#### Explanation of Provisions

##### 1. Changes to Implement TPEA and PATH

##### a. Changes to section 25A and section 222

Both TPEA and PATH add new requirements for claiming education tax benefits. Under TPEA, the student is required to receive a Form 1098-T in order to claim the LLC or the AOTC or claim the deduction under section 222. Under PATH, the ability to claim the AOTC is further limited. First, the taxpayer can claim the AOTC only if the taxpayer includes, on his/her return for which the credit is claimed, the EIN of any educational institution to which qualified tuition and related expenses are paid. Second, the taxpayer can claim the AOTC only if the TIN of the student and the TIN of the

taxpayer, on the return for which the credit is claimed, are issued on or before the due date of the original return.

*i. Form 1098-T requirement under TPEA*

Form 1098-T assists taxpayers in determining whether they are eligible to claim education tax credits under section 25A or the deduction for qualified tuition and related expenses under section 222. However, before TPEA, there was no requirement that the taxpayer (or the taxpayer's dependent if the taxpayer's dependent is the student) receive a Form 1098-T to claim these tax benefits.

Section 804 of TPEA changes the requirements for a taxpayer to claim education tax benefits under section 25A or section 222. For qualified tuition and related expenses paid during taxable years beginning after June 29, 2015, TPEA provides that, unless the Secretary provides otherwise, a taxpayer must receive a Form 1098-T to claim either a credit under section 25A or a deduction under section 222.

The proposed regulations reflect these changes. Specifically, the proposed regulations add a new paragraph (f) to § 1.25A-1 to require that for taxable years beginning after June 29, 2015, unless an exception applies, no education tax credit is allowed unless the taxpayer (or the taxpayer's dependent) receives a Form 1098-T. However, the proposed regulations explain that the amount reported on the Form 1098-T may not reflect the total amount of qualified tuition and related expenses that the taxpayer has paid during the taxable year because certain expenses are not required to be reported on the Form 1098-T. For example, under § 1.25A-2(d)(3), expenses for course materials paid to a vendor other than an eligible educational institution are eligible for the AOTC. However, because these expenses are not paid to an eligible educational institution, these expenses are not required to be reported on a Form 1098-T. Accordingly, a taxpayer who meets the requirements in § 1.25A-1(f) regarding the Form 1098-T requirement to claim the credit and who can substantiate payment of qualified tuition and related expenses may include these unre-

ported expenses in the computation of the amount of the education tax credit allowable for the taxable year even though the expenses are not reported on a Form 1098-T.

Proposed § 1.25A-1(f)(2)(i) provides an exception to the Form 1098-T requirement in § 1.25A-1(f)(1) if the student has not received a Form 1098-T by the later of (a) January 31 of the taxable year following the taxable year to which the education credit relates or (b) the date the federal income tax return claiming the education tax credit is filed. This exception only applies if the taxpayer or taxpayer's dependent (i) has requested, in the manner prescribed in publications, forms and instructions, or published guidance, the eligible educational institution to furnish the Form 1098-T after January 31 of the year following the taxable year to which the education tax credit relates but on or before the date the return is filed claiming the education tax credit, and (ii) has cooperated fully with the eligible educational institution's efforts to obtain information necessary to furnish the statement. Proposed § 1.25A-1(f)(2)(ii) provides that the receipt of a Form 1098-T is not required if the reporting rules under section 6050S and related regulations provide that the eligible educational institution is exempt from providing a Form 1098-T to the student (for example, non-credit courses). Proposed § 1.25A-1(f)(2)(iii) also provides that the IRS may provide additional exceptions in published guidance of general applicability, see § 601.601(d)(2). The proposed regulations under § 1.25A-1(f) apply to education tax credits claimed for taxable years beginning after June 29, 2015.

Until the proposed regulations under §§ 1.25A-1(f) and 1.6050S-1(a) are published in the **Federal Register** as final regulations, a taxpayer (or the taxpayer's dependent) (other than a non-resident alien) who does not receive a Form 1098-T because its institution is exempt from furnishing a Form 1098-T under current § 1.6050S-1(a)(2) may claim an education tax credit under section 25A(a) if the taxpayer (1) is otherwise qualified, (2) can demonstrate that the taxpayer (or the taxpayer's dependent) was enrolled at an eligible educational institution, and (3) can substantiate the payment of qualified

tuition and related expenses. Section 804(b) of TPEA also amends section 222 to require a Form 1098-T to claim a deduction for qualified tuition and related expenses for taxable years beginning after June 29, 2015. Rules similar to those in proposed § 1.25A-1(f), including the exceptions, apply for purposes of section 222.

*ii. Identification requirements for AOTC under PATH*

Section 206(a)(2) of PATH amends section 25A(i) to provide that the AOTC is not allowed if the student's TIN or the TIN of the taxpayer claiming the credit is issued after the due date for filing the return for the taxable year. This amendment is generally effective for any return or amended return filed after December 18, 2015. The proposed regulations reflect this change. Specifically, the proposed regulations add new § 1.25A-1(e)(2)(i), which provides that, for any federal income tax return (including an amended return) filed after December 18, 2015, no AOTC is allowed unless the student's TIN and the taxpayer's TIN are issued on or before the due date (including an extension, if timely requested) for filing the return for that taxable year.

Section 211 of PATH amends section 25A(i) to provide that the AOTC is not allowed unless the taxpayer's return includes the EIN of any institution to which the qualified tuition and related expenses were paid with respect to the student. The proposed regulations reflect this change by adding new § 1.25A-1(e)(2)(ii).

*b. Changes to section 6050S reporting to conform with TPEA 1098-T requirement*

*i. Exceptions to reporting requirement and clarifying changes*

Currently, the regulations under section 6050S include exceptions to reporting. For instance, under § 1.6050S-1(a)(2)(i), institutions are not required to file a Form 1098-T with the IRS or provide a Form 1098-T to a nonresident alien, unless the individual requests a Form 1098-T. Under § 1.6050S-1(a)(2)(ii), institutions are not required to report information with respect to courses



for which no academic credit is awarded. In addition, reporting is not required with respect to individuals whose qualified tuition and related expenses are paid entirely with scholarships under § 1.6050S-1(a)(2)(iii) or individuals whose qualified tuition and related expenses are paid under a formal billing arrangement under § 1.6050S-1(a)(2)(iv).

The exceptions in §§ 1.6050S-1(a)(2)(i), (iii), and (iv) to reporting on Form 1098-T are inconsistent with the TPEA, which generally requires a student to receive a Form 1098-T from the educational institution to claim a section 25A education credit. With these exceptions, a significant number of taxpayers claiming the credit will not have a Form 1098-T, which would frustrate the explicit purpose of TPEA. Therefore, the proposed regulations remove these exceptions.

Removal of the exceptions in §§ 1.6050S-1(a)(2)(i), (iii), and (iv) also assists students. Students to whom these exceptions apply are deprived of important information that they need to determine their eligibility for education tax credits. The Form 1098-T provides students with the amount of tuition paid (or billed for calendar year 2016 only), the amount of scholarships and grants that the institution administered and processed, and an indication of whether the student was enrolled at least a half time for an academic period. Students who do not receive a Form 1098-T cannot use the information that would be provided on the form to assist them in determining the proper amount of education credits they may claim. Further, removal of these exceptions will improve the IRS's ability to use the Form 1098-T to verify whether taxpayers should be allowed the education tax benefits that are claimed. In addition, removal of these exceptions would improve the IRS's ability to determine whether the institutions are complying with their reporting obligations.

The proposed regulations would not remove the exception to reporting under § 1.6050S-1(a)(2)(ii) for courses for which no academic credit is awarded. Treasury and the IRS understand that in many cases fees for these courses are charged outside of the financial systems used for students who are taking courses for credit. In addition, given that non-

credit courses would not be eligible for the AOTC (or Hope Credit) and would only be eligible for the LLC if the student is taking the course to acquire or improve job skills, reporting expenses paid for non-credit courses could cause confusion and unintended non-compliance.

Treasury and the IRS believe that students benefit from receipt of the Form 1098-T because the information on the form assists the student in determining eligibility for education tax benefits that make higher education more affordable. Reporting that does not provide useful information to students and the IRS, however, unduly burdens institutions and the IRS and could confuse students about whether they are eligible to claim education tax benefits. Therefore, Treasury and the IRS are asking for comments regarding exceptions to the reporting under section 6050S. Specifically, comments are requested regarding the exception to reporting for students who are nonresident aliens, including how an institution determines that a student is a nonresident alien and experience administering the existing exception. Comments are also requested regarding whether the exception for non-credit courses should be retained, and if so, whether there should be any changes to the exception.

The proposed regulations also revise the information that institutions are required to report on the Form 1098-T in an effort to provide more precise information for students to use when determining eligibility for and the amount of an education tax credit and for the IRS to use to verify compliance with the requirements for claiming the education tax credits. For instance, the current regulations under § 1.6050S-1(b)(2)(ii)(D) require that the Form 1098-T include an indication of whether amounts reported relate to an academic period that begins in the first three months of the next calendar year pursuant to the prepayment rule in § 1.25A-5(e)(2). The proposed regulations revise this section to include a requirement that the amount paid that relates to an academic period that begins in the first three months of the next calendar year be specifically stated on the Form 1098-T. This will assist the IRS in identifying credits claimed in two years for the same qualified tuition and related expenses.

In addition, the proposed regulations add a new paragraph (I) to § 1.6050S-1(b)(2)(ii) to require the institution to indicate the number of months that a student was a full-time student during the calendar year. The proposed regulations also add to that paragraph a definition of what constitutes a month. This information will assist the IRS in determining whether a parent properly claimed the student as a dependent and, therefore, properly claimed the credit for the student's qualified tuition and related expenses. See § 1.25A-1(f) for rules relating to claiming the credit in the case of a dependent.

The proposed regulations clarify § 1.6050S-1(b)(2)(v) regarding the rules for determining the amount of payments received for qualified tuition and related expenses. This clarification is intended to provide a uniform rule for all institutions to determine whether a payment received by an institution should be reported on a Form 1098-T as qualified tuition and related expenses in the current year. Under the proposed rule, payments received during a calendar year are treated first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year and then as payments of expenses other than qualified tuition and related expenses for enrollment during the calendar year. A similar rule applies in the case of payments received during the calendar year with respect to enrollment in an academic period beginning during the first three months of the next calendar year. In that case, the payments received by the institution with respect to the amount billed for enrollment in an academic period beginning during the first three months of the next calendar year are treated as payments of qualified tuition and related expenses for the calendar year in which the payments are received. Examples have been added to § 1.6050S-1(b)(2)(vii) to illustrate these rules. Treasury and the IRS request comments regarding these rules, including alternative approaches and recommendations for addressing other issues that should be covered by these rules.

The proposed regulations also revise § 1.6050S-1(c)(1)(iii) regarding the instructions accompanying the Form

1098–T that the institution must furnish to students. The proposed regulations add a new paragraph (D) to § 1.6050S–1(c)(1)(iii) to require institutions to include a paragraph in the instructions informing students that they may be able to optimize their federal tax benefits by taking a portion of a scholarship or grant into income. This new paragraph will alert students about their ability to optimize their federal education tax benefits by allocating all or a portion of their scholarship or grant to pay the student’s actual living expenses (if permitted by the terms of the scholarship or grant) by including such amounts in income on the student’s tax return if the student is required to file a return. By including such amounts in income, the scholarship or grant is no longer tax free, and the student is not required to reduce qualified tuition and related expenses by the amount paid with the now taxable scholarship or grant. See section 25A(g)(2) and § 1.25A–5(c)(3) for rules regarding allocation of scholarships and grants between qualified tuition and related expenses and other expenses. Minor revisions have also been made to the other paragraphs required to be included in instructions, including addition of the name of the form (Form 1098–T) on which reporting occurs and specific identification of Publication 970, “Tax Benefits for Education,” as a resource for taxpayers.

The proposed regulations also provide a definition of “administered and processed” for purposes of determining which scholarships and grants an institution is required to report on the Form 1098–T. The current regulations do not have a definition of this term, and the lack of a definition has resulted in uncertainty and inconsistent reporting. The proposed regulations resolve this by adding a definition of “administered and processed” to § 1.6050S–1(e)(1)(i). Under this definition, a scholarship or grant is administered and processed by an institution if the institution receives payment of an amount (whether by cash, check, or other means of payment) that the institution knows or reasonably should know, is a scholarship or grant, regardless of whether the institution is named as the payee or a co-payee of the amount and regardless of whether, in the case of a payment other than in cash, the student endorses the check or

other means of payment for the benefit of the institution. Pell Grants are provided as an example of a scholarship or grant that is treated as administered and processed by an institution.

*ii. PATH eliminates option to report amount billed*

These proposed regulations also implement the amendment to section 6050S(b)(2)(B)(i) under PATH, which eliminates the option for eligible educational institutions to report the aggregate amount billed for qualified tuition and related expenses for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date. Eligible educational institutions have informed the IRS that they cannot implement the necessary changes in technology to enable reporting of aggregate payments of qualified tuition and expenses for the first year in which the statutory amendment applies, calendar year 2016. Therefore, in Announcement 2016–17, I.R.B. 2016–20, the IRS stated that it will not impose penalties under section 6721 or 6722 against an eligible educational institution required to file 2016 Forms 1098–T solely because the institution reports the aggregate amount billed for qualified tuition and expenses rather than the aggregate payments of qualified tuition and related expenses received. Thus, for calendar year 2016, no penalties will be imposed if an educational institution fails to implement the PATH’s amendment to section 6050S(b)(2)(B)(i) and continues to report the amount billed.

The proposed regulations reflect the PATH amendment by eliminating the option to report the amount billed. These regulations are proposed to be effective on publication of final regulations in the **Federal Register**. In the interim, the limited penalty relief in Announcement 2016–17 will apply to allow educational institutions to report the amount billed for calendar year 2016.

*iii. No change required to implement EIN reporting requirement*

Current regulations under § 1.6050S–1(b)(2)(ii)(A) require that the eligible educational institution report its name, ad-

dress, and TIN on the Form 1098–T. Accordingly, the amendment to section 6050S(b)(2) by section 211(b) of PATH requiring eligible educational institutions and insurers to report their EIN does not require a change to the regulations.

*c. Changes to implement new section 6724(f)*

Section 1.6050S–1(f)(4) of the proposed regulations reflects the enactment of section 6724(f) by section 805 of TPEA. Under section 6724(f), the IRS may not impose information reporting penalties under section 6721 and section 6722 against an eligible educational institution for failure to include a correct TIN on the Form 1098–T if the institution certifies compliance with IRS standards for soliciting TINs. Relief under section 6724(f) applies only to eligible educational institutions and does not apply to insurers required to file Forms 1098–T under section 6050S(a)(2).

The IRS generally sends penalty notices to taxpayers who fail to file information returns when required or who file incorrect information returns. Filers seeking penalty relief based on reasonable cause must respond to the penalty notice with a statement explaining how the filer qualifies for relief. Under section 6724(f), however, no penalty under section 6721 or 6722 is imposed in the first instance if the educational institution contemporaneously makes a true and accurate certification under penalties of perjury in such form and manner as may be prescribed by the Secretary that it complied with the standards promulgated by the Secretary to obtain the student’s TIN. Section 6724(f) is effective for returns required to be filed and statements required to be furnished after December 31, 2015.

Standards for obtaining the student’s TIN are set forth in § 1.6050S–1(e)(3)(ii) and (iii) of the existing regulations. These regulations are proposed to be redesignated as § 1.6050S–1(f)(3)(ii) and (iii). Under these standards, the institution does not have to solicit a student’s TIN, but may use the TIN that it has in its records. If the institution does not have the student’s correct TIN in its records, then it must solicit the TIN in the time and manner described in redesignated § 1.6050S–

1(f). To implement section 6724(f), § 1.6050S-1(f)(4) of the proposed regulations has been added to provide that for returns required to be filed and statements required to be furnished after December 31, 2015, the IRS will not impose a penalty against an institution under section 6721 or 6722 for failure to include the student's correct TIN on the return or statement if the institution certifies to the IRS under penalties of perjury in the form and manner prescribed by the Secretary in publications, forms and instructions, or other published guidance at the time of filing of the return that the institution complied with the requirements in § 1.6050S-1(f)(3)(ii) and (iii). However, the proposed regulations make clear that the certification will not protect the institution from penalty if the IRS determines subsequently that the requirements of § 1.6050S-1(f)(3)(ii) and (iii) were not satisfied or if the failure to file correct information returns relates to something other than a failure to provide the correct TIN for the student. In addition, a cross-reference is proposed to be added to the regulations under section 6724 to alert taxpayers that the rules for penalty relief for eligible educational institutions with respect to reporting obligations under section 6050S are contained in § 1.6050S-1(f).

*d. Penalty relief under section 6724(f) for calendar year 2015 Forms 1098-T*

Section 6724(f) requires the IRS to develop procedures enabling an eligible educational institution to avoid imposition of the section 6721 and section 6722 penalty for failure to include a student's correct TIN on the Form 1098-T by certifying under penalties of perjury at the time of filing or furnishing the form that the institution complied with the IRS standards for obtaining a student's TIN. In Announcement 2016-03, I.R.B. 2016-4, the IRS stated that it will not impose penalties under section 6721 or 6722 against an eligible educational institution required to file Forms 1098-T for calendar year 2015 solely because the student's TIN is missing or incorrect.

*2. Other Changes to Regulations Under Section 25A and Section 6050S*

The proposed regulations also update and clarify the regulations under section 25A. The proposed regulations update § 1.25A-2(d) to reflect the changes made by ARRA allowing students to claim the AOTC for expenses paid for course materials (such as books, supplies, and equipment) required for enrollment or attendance, whether or not the course materials are purchased from the institution. Prior to ARRA, the term "qualified tuition and related expenses" included tuition and fees, but did not include course materials, such as books, unless the cost of these materials was a fee that was required to be paid to the institution as a condition of attendance or enrollment. See section 25A(f)(1) and § 1.25A-2(d)(2)(ii).

When Congress enacted the AOTC in 2009, it expanded the definition of qualified tuition and related expenses for purposes of the AOTC to include expenses paid for course materials. See H.R. Conf. Rep. 111-16, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. p. 525 (February 29, 2009). Course materials are qualified expenses only for the AOTC and not for the LLC. See Tax Increase Prevention Act of 2014 (Public Law 113-295, 128 Stat. 4010). The proposed regulations update § 1.25A-2(d) to provide that, for purposes of claiming the AOTC for tax years beginning after December 31, 2008, the definition of qualified tuition and related expenses includes not only tuition and fees required for enrollment or attendance at an eligible educational institution, but also expenses paid for course materials needed for enrollment or attendance at an eligible educational institution. Accordingly, after ARRA, for purposes of claiming the Hope Scholarship Credit and LLC, qualified tuition and related expenses continue to exclude the cost of books, supplies, and equipment if they can be purchased from any vendor. However, for purposes of claiming the AOTC, qualified tuition and related expenses includes the cost of course materials such as books, supplies and equipment that is needed for meaningful attendance or enrollment in a course of study, whether or not the materials are purchased from the institution. The proposed regulations provide an example that illustrates

that for purposes of the AOTC qualified tuition and related expenses includes the cost of course material, including books, even if a taxpayer purchases these materials from a vendor other than the institution.

In addition, the proposed regulations add a new section under section 6050S to eliminate uncertainty in the reporting requirements that may result from these proposed amendments to § 1.25A-2(d). Under proposed § 1.6050S-1(a)(2)(i), an institution is not required to report the amount paid or billed for books, supplies, and equipment unless the amount is a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance under § 1.25A-2(d)(2)(ii).

The proposed regulations also clarify the example in § 1.25A-5(e)(2)(ii) regarding the prepayment rule. Under § 1.25A-5(e)(2)(i), if qualified tuition and related expenses are paid during one taxable year for an academic period that begins during the first three months of the taxpayer's next taxable year (that is, in January, February, or March of the next taxable year for calendar year taxpayers), an education tax credit is allowed for the qualified tuition and related expenses only in the taxable year in which the taxpayer pays the expenses. The Treasury Department and the IRS are aware that there is some uncertainty regarding the application of the prepayment rule to amounts paid in the prior year and the current year for an academic period beginning during the current year. The proposed regulations clarify the proper treatment in this situation by expanding the Example in § 1.25A-5(e)(2)(ii) to illustrate that a student who pays part of a semester's tuition in Year 1, and the remainder in Year 2, may claim a credit for Year 1, for the portion of the tuition paid in December Year 1 and a separate credit for Year 2 for the portion of the tuition paid in February Year 2.

The proposed regulations also clarify the rules under § 1.25A-5(f) regarding a refund of qualified tuition and related expenses received from an eligible educational institution. The current regulations do not address the situation where the taxpayer receives a refund in the current taxable year of qualified tuition and related expenses for an academic period be-



ginning in the current taxable year for which payments were made during the prior taxable year under the prepayment rule and payments were made during the current taxable year. To address this situation, the proposed regulations provide that the taxpayer may allocate the refund in any proportion to reduce qualified tuition and related expenses paid in either taxable year, except that the amount of the refund allocated to a taxable year may not exceed the qualified tuition and related expenses paid in the taxable year for the academic period to which the refund relates. The sum of the amounts allocated to each taxable year cannot exceed the amount of the refund. The proposed regulations add an example to illustrate this rule.

### **Proposed Effective and Applicability Dates**

These regulations are proposed to take effect when published in the **Federal Register** as final regulations.

### **Statement of Availability of IRS Documents**

IRS published guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The type of small entities to which the regulations may apply are small eligible educational institutions (generally colleges and uni-

versities eligible to receive federal financial aid for education under the Higher Education Act of 1965). This certification is based on the fact that few, if any, new eligible educational institutions will be subject to reporting and the changes made by this notice of proposed rulemaking require little, if any, additional time for compliance by institutions currently subject to reporting requirements. The collection of information in this regulation implements the statute and should not require eligible educational institutions to collect information that is not already maintained by the institution. Eligible educational institutions have been subject to information reporting under section 6050S since 1998, and the obligations under the existing final regulations that are the foundation for these proposed regulations are already in place. Any additional information returns required to be filed under this notice of proposed rulemaking should result in few, if any, new eligible educational institutions being subject to reporting that were not already required to file Forms 1098-T. Only eligible educational institutions, not all educational institutions, are subject to these reporting rules. For this purpose, an eligible educational institution means an institution described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on the date of enactment (August 5, 1997), and which is eligible to participate in a program under title IV of such act (generally colleges and universities whose students are eligible to receive federal financial aid for higher education). See sections 25A(f)(2) and 6050S(e). Further, this notice of proposed rulemaking contains modifications that should simplify compliance and thereby reduce the time needed to comply with the information reporting obligations under section 6050S. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. The Internal Revenue Service invites the public to comment on this certification.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “DATES” and “ADDRESSES” headings. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request.

A public hearing has been scheduled for November 30, 2016 at 10:00 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed onto the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by October 16, 2016 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 31, 2016. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal author of these proposed regulations is Gerald Semasek of the Office of Associate Chief Counsel (Procedure and Administration) for the proposed regulations under section 6050S and section 6724 and Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting) for the proposed regulations under section 25A.

\* \* \* \* \*

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

**PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.25A-0 is amended by:

- 1. Revising the entry for § 1.25A-1(e)(1) introductory text.
- 2. Adding entries for § 1.25A-1(e)(1), (2), and (3).
- 3. Revising the entries for § 1.25A-1(f) introductory text and (f)(2).
- 4. Adding entries for § 1.25A-1(f)(3) and (4).
- 5. Revising the entries for § 1.25A-1(g) and (h).
- 6. Adding an entry for § 1.25A-1(i).
- 7. Revising the entries for §§ 1.25A-2(d)(3), (4), (5), and (6).
- 8. Adding entries for §§ 1.25A-2(d)(7) and (e).
- 9. Revising the entry for § 1.25A-5(f)(6).
- 10. Adding entries for §§ 1.25A-5(f)(7) and (g).

The revisions and additions read as follows:

*§ 1.25A-0 Table of Contents.*

\* \* \* \* \*

*§ 1.25A-1 Calculation of Education Tax Credit and General Eligibility Requirements*

\* \* \* \* \*

(e) Identification requirements.

(1) In general.

(2) Additional identification requirements for the American Opportunity Tax Credit.

(i) TIN must be issued on or before the due date of the original return.

(ii) Return must include the eligible educational institution's employer identification number (EIN).

(3) Applicability dates.

(f) Statement requirement.

\* \* \* \* \*

- (2) Exceptions.
- (3) Transition rule.
- (4) Applicability date.
- (g) Claiming the credit in the case of a dependent.
- (h) Married taxpayers.
- (i) Nonresident alien taxpayers and dependents.

*§ 1.25A-2 Definitions*

\* \* \* \* \*

(d) \* \* \*

(3) Course materials for the American Opportunity Tax Credit for taxable years beginning after December 31, 2008.

(4) Personal expenses.

(5) Treatment of a comprehensive or bundled fee.

(6) Hobby courses.

(7) Examples.

(e) Applicability date.

\* \* \* \* \*

*§ 1.25A-5 Special Rules Relating to Characterization and Timing of Payments*

\* \* \* \* \*

(f) \* \* \*

(6) Treatment of refunds where qualified tuition and related expenses paid in two taxable years for the same academic period.

(7) Examples.

(g) Applicability dates.

Par. 3. Section 1.25A-1 is amended by:

1. Revising paragraph (e).

2. Redesignating paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively.

3. Adding a new paragraph (f).

4. In newly redesignated paragraph (g)(2), removing the language “(f)” and adding “(g)” in its place.

The revisions and additions read as follows:

*§ 1.25A-1 Calculation of education tax credit and general eligibility requirements.*

\* \* \* \* \*

(e) *Identification requirements*—(1) *In general.* No education tax credit is allowed unless a taxpayer includes on the federal income tax return claiming the credit the name and the taxpayer identi-

fication number (TIN) of the student for whom the credit is claimed. For rules relating to assessment for an omission of a correct taxpayer identification number, see section 6213(b) and (g)(2)(J).

(2) *Additional identification requirements for the American Opportunity Tax Credit (AOTC)*—(i) *TIN must be issued on or before the due date of the original return.* For any federal income tax return (including an amended return) filed after December 18, 2015, no AOTC is allowed unless the TIN of the student and the TIN for the taxpayer claiming the credit are issued on or before the due date, or the extended due date if the extension request is timely filed, for filing the return for the taxable year for which the credit is claimed.

(ii) *Return must include the eligible educational institution's employer identification number (EIN).* For taxable years beginning after December 31, 2015, no AOTC is allowed unless the taxpayer includes the EIN of each eligible educational institution to which qualified tuition and related expenses were paid.

(3) *Applicability dates.* (i) Except as provided in paragraphs (e)(3)(ii) and (iii) of this section, this paragraph (e) applies on or after December 26, 2002.

(ii) Paragraph (e)(2)(i) of this section applies to federal income tax returns (including amended returns) filed after December 18, 2015.

(iii) Paragraph (e)(2)(ii) of this section applies to taxable years beginning after December 31, 2015.

(f) *Statement requirement*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, for taxable years beginning after June 29, 2015, no education tax credit is allowed unless the taxpayer (or the taxpayer's dependent) receives a statement furnished by an eligible educational institution, as defined in § 1.25A-2(b), containing all of the information required under § 1.6050S-1(b)(2). The amount of qualified tuition and related expenses reported on the statement furnished by an eligible educational institution may not reflect the total amount of the qualified tuition and related expenses paid during the taxable year for which a taxpayer may claim an education tax credit. A taxpayer that substantiates payment of qualified tuition and related ex-

penses that are not reported on Form 1098-T, "Tuition Statement", may include those expenses in computing the amount of the education tax credit allowable for the taxable year.

(2) *Exceptions.* Paragraph (f)(1) of this section does not apply—

(i) If the taxpayer or the taxpayer's dependent:

(A) Has not received such a statement from an eligible educational institution required to furnish such statement under section 6050S and the regulations thereunder as of January 31 of the year following the taxable year to which the education tax credit relates or the date the return is filed claiming the education tax credit, whichever is later;

(B) Has requested, in the manner prescribed in forms, instructions, or in other published guidance, the eligible educational institution to furnish the Form 1098-T after January 31 of the year following the taxable year to which the education tax credit relates but on or before the date the return is filed claiming the education tax credit; and

(C) Has cooperated fully with the eligible educational institution's efforts to obtain information necessary to furnish the statement;

(ii) If the eligible educational institution is not required to furnish a statement to the student under section 6050S and the regulations thereunder; or

(iii) As otherwise provided in published guidance of general applicability, see § 601.601(d)(2) of this chapter.

(3) *Applicability date.* Paragraph (f) of this section applies to credits claimed for taxable years beginning after June 29, 2015.

\* \* \* \* \*

Par. 4. Section 1.25A-2 is amended by:

1. Revising paragraphs (d)(2)(i) and (ii).

2. In paragraph (d)(2)(iii), removing the language "(d)(3)" and adding "(d)(4)" in its place.

3. Redesignating paragraphs (d)(3), (4), (5), and (6) as paragraphs (d)(4), (5), (6), and (7), respectively.

4. Adding a new paragraph (d)(3).

5. In newly redesignated paragraph (d)(5), by removing the language "(d)(3)" and adding "(d)(4)" in its place.

6. In newly redesignated paragraph (d)(7), revising *Example 2*, redesignating *Examples 3, 4, 5, and 6*, as *Examples 4, 5, 6, and 7*, and adding a new *Example 3*.

7. Adding paragraph (e).

The revisions and additions read as follows:

§ 1.25A-2 *Definitions.*

\* \* \* \* \*

(d) \* \* \* \* \*

(2) *Required fees*—(i) *In general.* Except as provided in paragraphs (d)(3) and (4) of this section, the test for determining whether any fee is a qualified tuition and related expense is whether the fee is required to be paid to the eligible educational institution as a condition of the student's enrollment or attendance at the institution.

(ii) *Books, supplies, and equipment.* For taxable years beginning before January 1, 2009, for purposes of the Hope Scholarship Credit, and for taxable years beginning after December 31, 1997, for purposes of the Lifetime Learning Credit, qualified tuition and related expenses include fees for books, supplies, and equipment used in a course of study only if the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution. For taxable years beginning after December 31, 2008, see paragraph (d)(3) of this section for rules relating to books, supplies and equipment for purposes of the American Opportunity Tax Credit.

\* \* \* \* \*

(3) *Course materials for the American Opportunity Tax Credit for taxable years beginning after December 31, 2008.* For taxable years beginning after December 31, 2008, the term "qualified tuition and related expenses" for purposes of the American Opportunity Tax Credit under section 25A(i) includes the amount paid for course materials (such as books, supplies, and equipment) required for enrollment or attendance at an eligible educational institution. For this purpose, "required for enrollment or attendance" means that the course materials are needed for meaningful attendance or enrollment in a course of study, regardless of whether the course materials are purchased from the institution.

\* \* \* \* \*

(7) \* \* \* \*

*Example 2.* First-year students attending College W during 2008 are required to obtain books and other materials used in its mandatory first-year curriculum. The books and other reading materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. The expenses paid for the first-year books and materials purchased at College W's bookstore are not qualified tuition and related expenses because under § 1.25A-2(d)(2)(ii) the books and materials are not required to be purchased from College W for enrollment or attendance at the institution. In addition, expenses paid for the first-year books and materials borrowed from other students or purchased from vendors other than College W's bookstore are also not qualified tuition and related expenses because under § 1.25A-2(d)(2)(ii) the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

*Example 3.* Assume the same facts as *Example 2*, except that the books and materials are required for first-year students attending College W during 2009. Because the expenses are paid with respect to enrollment or attendance after 2008, § 1.25A-1(d)(3) applies rather than § 1.25A-1(d)(2)(ii), if the taxpayer claims the American Opportunity Tax Credit under section 25A(i). Under § 1.25A-1(d)(3), expenses for books and other course materials are qualified tuition and related expenses for purposes of the American Opportunity Tax Credit if they are needed for meaningful attendance in the student's course of study at College W. Accordingly, if the taxpayer claims the American Opportunity Tax Credit for 2009, the expenses paid for the first-year books and materials are qualified tuition and related expenses. However, if the taxpayer claims the Lifetime Learning Credit for 2009 under section 25A(c), § 1.25A-2(d)(2)(ii) applies rather than § 1.25A-1(d)(3). Accordingly, if the taxpayer claims the Lifetime Learning Credit, the expenses paid for the first-year books and materials purchased at College W's bookstore are not qualified tuition and related expenses because under § 1.25A-2(d)(2)(ii) the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

\* \* \* \* \*

(e) *Applicability date.* (1) Except as provided in paragraph (e)(2) of this section, this section applies on or after December 26, 2002.

(2) Paragraphs (d)(2)(i), (d)(2)(ii), (d)(3), and *Examples 2 and 3* of paragraph (d)(7) of this section apply to qualified tuition and related expenses paid, and education furnished in academic periods beginning, on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may apply



paragraphs (d)(2)(i), (d)(2)(ii), (d)(3), and *Examples 2 and 3* of paragraph (d)(7) of this section for taxable years beginning after December 31, 2008, for which the period of limitations on filing a claim for credit or refund under section 6511 has not expired.

Par. 5. Section 1.25A-5 is amended by:

1. In paragraph (e)(2)(ii), revising the *Example*.

2. Redesignating paragraph (f)(6) as paragraph (f)(7).

3. Adding a new paragraph (f)(6).

4. In newly redesignated paragraph (f)(7), adding *Example 4*.

5. Adding paragraph (g).

The revisions and additions read as follows:

§ 1.25A-5 *Special rules relating to characterization and timing of payments.*

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

*Example.* In December 2016, Taxpayer A, a calendar year taxpayer who is not a dependent of another taxpayer under section 151, receives a bill from College Z for \$5,000 for qualified tuition and related expenses to attend College Z for the 2017 spring semester, which begins in January 2017. This is the first semester that Taxpayer A will attend College Z. On December 15, 2016, Taxpayer A pays College Z \$1,000 in qualified tuition and related expenses for the 2017 spring semester. On February 15, 2017, Taxpayer A pays College Z the remaining \$4,000 due for qualified tuition and related expenses for the 2017 spring semester. In August 2017, Taxpayer A receives a bill from College Z for \$7,000 for qualified tuition and related expenses to attend College Z for the 2017 fall semester, which begins in September 2017. Taxpayer A pays the entire \$7,000 on September 1, 2017. In December 2017, Taxpayer A receives a bill from College Z for \$7,000 for qualified tuition and related expenses to attend for the 2018 spring semester. Taxpayer A pays \$1,000 of the 2018 spring semester bill on December 15, 2017 and \$6,000 of that bill in February 15, 2018. Taxpayer A does not enroll in an eligible educational institution for the 2018 fall semester or the 2019 spring semester. Taxpayer A may claim an education tax credit on Taxpayer A's 2016 Form 1040 with respect to the \$1,000 taxpayer paid to College Z on December 15, 2016 for the 2017 spring semester. On Taxpayer A's 2017 Form 1040, Taxpayer A may claim an education credit with respect to the \$12,000 Taxpayer A paid to College Z during 2017 (\$4,000 paid on February 15, 2017 for the 2017 spring semester, \$7,000 paid on September 1, 2017, for the 2017 fall semester, and \$1,000 paid on December 15, 2017, for the 2018 spring semester). On Taxpayer A's 2018 Form 1040, Taxpayer A may claim an

education credit with respect to the \$6,000 taxpayer paid to College Z on February 15, 2018.

\* \* \* \* \*

(f) \* \* \*

(6) *Treatment of refunds where qualified tuition and related expenses paid in two taxable years for the same academic period.* If a taxpayer or someone other than the taxpayer –

(i) Pays qualified tuition and related expenses in one taxable year (prior taxable year) for a student's enrollment or attendance at an eligible educational institution during an academic period beginning in the first three months of the taxpayer's next taxable year (subsequent taxable year);

(ii) Pays qualified tuition and related expenses in the subsequent taxable year for the academic period beginning in the first three months of the subsequent taxable year; and

(iii) Receives a refund of qualified tuition and related expenses during the subsequent taxable year for the academic period beginning in the first three months of the subsequent taxable year (including an amount treated as a refund under paragraph (f)(4) or (5) of this section), the taxpayer may allocate the refund in any proportion to qualified tuition and related expenses paid in the prior taxable year under paragraph (f)(2) or (3) of this section or the subsequent taxable year under paragraph (f)(1) of this section, except that the amount of the refund allocated to a taxable year may not exceed the qualified tuition and related expenses paid during the taxable year with respect to the academic period beginning in the subsequent taxable year. The sum of the amounts allocated to each taxable year cannot exceed the amount of the refund.

(7) \* \* \*

*Example 4.* In December 2016, Taxpayer D, a calendar year taxpayer who is not a dependent of another taxpayer under section 151, receives a bill from University X for \$2,000 for qualified tuition and related expenses to attend University X as a full-time student for the 2017 spring semester, which begins in January 2017. In December 2016, D pays \$500 of qualified tuition and related expenses for the 2017 spring semester. In January 2017, D pays an additional \$1,500 of qualified tuition and related expenses for the 2017 spring semester. Early in the 2017 spring semester, D withdraws from several courses and no longer qualifies as a full-time student. As a result of D's change in status from a full-time student to a part-time student, D receives a \$750 refund from University X on February 16, 2017. D

has no other qualified tuition and related expenses for 2017. Under paragraph (f)(6) of this section, D may allocate all, or a portion, of the \$750 refund to reduce the \$1,500 of qualified tuition and related expenses paid in 2017 or D may also allocate a portion of the \$750 refund, up to \$500, to reduce the qualified tuition and related expenses paid in 2016 and allocate the remainder of the refund to reduce the qualified tuition and related expenses paid in 2017.

(g) *Applicability date.* (1) Except as provided in paragraph (g)(2) of this section, this section applies on or after December 26, 2002.

(2) Paragraphs (e)(2)(ii), (f)(6), and *Example 4* in paragraph (f)(7) of this section apply to qualified tuition and related expenses paid and education furnished in academic periods beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. However, taxpayers may apply paragraphs (e)(2)(ii), (f)(6), and *Example 4* in paragraph (f)(7) of this section in taxable years for which the limitation on filing a claim for credit or refund under section 6511 has not expired.

Par. 6. Section 1.6050S-0 is amended by:

1. Revising the entry for § 1.6050S-1(a)(2)(i).

2. Removing the entries for § 1.6050S-1(a)(2)(iii) and (iv).

3. Revising the entries for § 1.6050S-1(b)(2) introductory text and (b)(2)(ii).

4. Revising the entry for § 1.6050S-1(b)(3) introductory text.

5. Removing the entries for § 1.6050S-1(b)(3)(iii), (iv) and (v).

6. Revising the entry for § 1.6050S-1(b)(4).

7. Removing the entry for § 1.6050S-1(b)(5).

8. Redesignating the entry for § 1.6050S-1(b)(6) as § 1.6050S-1(b)(5).

9. Adding entries for § 1.6050S-1(c)(1)(i), (ii) and (iii).

10. Removing the entry for § 1.6050S-1(c)(2)(ii).

11. Redesignating the entry for § 1.6050S-1(c)(2)(iii) as § 1.6050S-1(c)(2)(ii).

12. Redesignating the entries for § 1.6050S-1(e) and § 1.6050S-1(f) as § 1.6050S-1(f) and § 1.6050S-1(g), respectively.

13. Adding a new entry for § 1.6050S-1(e).

14. Revising the newly redesignated entry for § 1.6050S-1(f)(4).

15. Adding a new entry for § 1.6050S-1(f)(5).

The revisions and additions to read as follows:

*§ 1.6050S-0 Table of contents.*

\* \* \* \* \*

*§ 1.6050S-1 Information reporting for qualified tuition and related expenses.*

(a) \* \* \*

(2) \* \* \*

(i) No reporting of amounts for books, supplies and equipment unless the amount is a fee required to be paid to the institution.

(A) In general.

(B) Examples.

\* \* \* \* \*

(b) \* \* \*

(2) Information reporting requirements for educational institutions for qualified tuition and related expenses.

\* \* \* \* \*

(ii) Information included on return.

(A) Name, address and TIN of institution

(B) Name address and TIN of individual enrolled at institution

(C) Amount of payments of qualified tuition and related expenses

(D) Indication of whether payments pertain to academic period commencing in first three months of following calendar year

(E) Amount of scholarships or grants

(F) Amount of reimbursements or refunds pertaining to expenses reported in prior year

(G) Amount of reductions of scholarships or grants

(H) Statement of whether individual enrolled for at least half of normal full-time work load

(I) Number of months during which individual enrolled for normal full-time work-load

(J) Statement of individual's enrollment in graduate-level program

(K) Any additional information required by Form 1098-T or instructions

\* \* \* \* \*

(3) Requirements for insurers.

\* \* \* \* \*

(4) Time and place for filing return.

(i) In general.

(ii) Extensions of time.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Required information.

(ii) Legend identifying statement as important tax information.

(iii) Instructions.

(A) Statement of payments made or reimbursements or refunds made.

(B) Statement regarding extent of individual's eligibility for credit under section 25A.

(C) Statement regarding reduction in tax credit due to grant or scholarship.

(D) Statement notifying individual of ability to allocate scholarship or grant.

(E) Statement notifying individual of consequences of refunds, reimbursements, reductions in tuition charges or grants or scholarships for prior taxable year.

(F) Statement informing individual of consequences of reimbursement or refund by institution or insurer.

(G) Statement notifying individual to consult forms and publications of IRS.

(H) Name, address and phone number of educational institution or insurer.

\* \* \* \* \*

(e) Definitions.

(1) Administered and processed.

(i) In general.

(ii) Examples.

(2) Cost of attendance.

(f) \* \* \*

(4) No penalty imposed on eligible educational institutions that certify compliance with paragraph (f)(3) of this section at the time of filing the return.

(5) Failure to furnish TIN.

\* \* \* \* \*

Par. 7. Section 1.6050S-1 is amended by:

1. Revising paragraph (a)(2)(i) and removing paragraphs (a)(2)(iii) and (iv).

2. Revising paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii)(D), (E), (G) and (H).

3. Redesignating paragraphs (b)(2)(ii)(I) and (J) as paragraphs (b)(2)(ii)(J) and (K), respectively, and adding a new paragraph (b)(2)(ii)(I).

4. Revising newly redesignated paragraph (b)(2)(ii)(J).

5. Revising paragraphs (b)(2)(iv), (v), (vi) and *Example 1, 2, 3, and 4* in paragraph (b)(2)(vii).

6. In paragraph (b)(2)(vii), adding *Example 5 and 6*.

7. Removing paragraph (b)(3) and redesignating paragraphs (b)(4), (5) and (6) as paragraphs (b)(3), (4) and (5), respectively.

8. Revising newly redesignated paragraph (b)(4)(i).

9. Removing newly redesignated paragraph (b)(4)(ii) and further redesignating paragraph (b)(4)(iii) as paragraph (b)(4)(ii).

10. Revising paragraphs (c)(1)(iii)(A), (B) and (C).

11. Redesignating paragraphs (c)(1)(iii)(D), (E), (F), and (G) as paragraphs (c)(1)(iii)(E), (F), (G), and (H), respectively.

12. Revising newly re-designated paragraphs (c)(1)(iii)(E), (F), (G), and (H).

13. Adding a new paragraph (c)(1)(iii)(D).

14. Revising paragraph (c)(2)(i).

15. Removing paragraph (c)(2)(ii) and redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(ii).

16. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

17. Adding a new paragraph (e).

18. In newly redesignated paragraph (f):

i. Revising paragraph (f)(3)(ii).

ii. In paragraph (f)(3)(iii), removing the language "(e)(3)(iii)" and adding "(f)(3)(iii)" in its place.

iii. Further redesignating paragraph (f)(4) as paragraph (f)(5).

iv. Adding new paragraph (f)(4).

19. Revising newly redesignated paragraph (g).

The revisions and additions read as follows:

*§ 1.6050S-1 Information reporting for qualified tuition and related expenses.*

(a) \* \* \*

(2) \* \* \*

(i) *No reporting of amounts for books, supplies and equipment unless the amount is a fee required to be paid to the institution—(A) In general.* The information reporting requirements of this section do not apply to amounts paid for books, supplies,

and equipment unless the amount is a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance under § 1.25A-2(d)(2)(ii).

(B) *Examples.* The following examples illustrate the rules of this paragraph (a)(2):

*Example 1.* First-year students at College W are required to obtain books and other materials used in its mandatory first-year curriculum. The books and other materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. Because the first-year books and materials may be purchased from any vendor, the amount is not a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance and, therefore, is not subject to reporting under paragraph (a)(2)(i) of this section. No amount is reportable even if a first-year student pays College W for the required books and other materials purchased from College W's bookstore.

*Example 2.* Assume the same facts as *Example 1* of this paragraph (a)(2), except College W furnishes the books and other materials to each first-year student and the books may not be borrowed or purchased from other sources. College W charges a separate fee for books and materials to all first-year students for these items as part of the bill required to be paid to attend the institution. Under paragraph (a)(2)(i) of this section, because the amount is a fee that must be paid to the eligible educational institution as a condition of enrollment or attendance, the fee, if paid by or on behalf of the student, must be reported on the Form 1098-T as part of the qualified tuition and related expenses.

\* \* \* \* \*

(b) *Requirement to file return—(1) In general.* Eligible educational institutions must report the information described in paragraph (b)(2) of this section, which requires institutions to report, among other information, the amount of payments received during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to payments received for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(2) of this section, an adjustment made to payments received means a reimbursement or refund. Insurers must report the information described in paragraph (b)(3) of this section.

(2) *Information reporting requirements—(i) In general.* Except as provided in paragraph (a)(2) of this section (regarding exceptions where no information re-

porting is required), an eligible educational institution must file an information return with the IRS on Form 1098-T, "Tuition Statement," with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year (including an academic period beginning during the first three months of the next calendar year) or during a prior calendar year and for whom a transaction described in paragraph (b)(2)(ii)(C), (E), (F), or (G) of this section is made during the calendar year. An eligible educational institution may use a substitute Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms (see § 601.601(d)(2) of this chapter).

(ii) \* \* \*

(D) An indication by the institution whether any payments received for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year and the amount of such payments;

(E) The amount of any scholarships or grants for the payment of the individual's cost of attendance (as defined in paragraph (e)(2) of this section) that the institution administered and processed (as defined in paragraph (e)(1) of this section) during the calendar year;

\* \* \* \* \*

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's cost of attendance (as defined in paragraph (e)(2) of this section) that were reported by the eligible educational institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder for more information regarding workload requirements);

(I) A statement or other indication showing the number of months (for this purpose, one day in a month is treated as an entire month) during the calendar year that the individual was enrolled for the

normal full-time workload for the course of study the individual is pursuing at the institution;

(J) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential, unless the student is enrolled in both a graduate-level program and an undergraduate level program during the same calendar year at the same institution in which case no statement or indication is required; and

\* \* \* \* \*

(iv) *Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098-T any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reimbursements or refunds are not netted against the payments received for qualified tuition and related expenses during the current calendar year.

(v) *Payments received for qualified tuition and related expenses determined.* For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year, and then as payments of expenses other than qualified tuition and related expenses for enrollment during the calendar year. Payments received with respect to an amount billed for enrollment during an academic period beginning in the first 3 months of the following calendar year in which the payment is made are treated as payment of qualified tuition and related expenses in the calendar year during which the payment is received by the institution. For



purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges.

(vi) *Reimbursements or refunds of payments for qualified tuition and related expenses determined.* For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of a scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board) is treated as a reimbursement or refund of payments for qualified tuition and related expenses up to the amount of any reduction in charges for qualified tuition and related expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.

(vii) \* \* \*

*Example 1.* (i) Student A enrolls in University X as a full-time student for the 2016 fall semester. In early August 2016, University X sends a bill to Student A for \$16,000 for the 2016 fall semester breaking out the current charges as follows: \$10,000 for qualified tuition and related expenses and \$6,000 for room and board. In late August 2016, Student A pays \$11,000 to University X, leaving a remaining balance to be paid of \$5,000. In early September 2016, Student A drops to half-time enrollment for the 2016 fall semester but remains in on-campus housing. In late September 2016, University X credits \$5,000 to Student A's account, reflecting a \$5,000 reduction in the \$10,000 charge for qualified tuition and related expenses as a result of dropping from full-time to half-time status. No other transactions occur with respect to Student A's account with University X. In late September 2016, University X applies the \$5,000 credit toward Student A's current charges, eliminating any outstanding balance on Student A's account with University X.

(ii) Under paragraph (b)(2)(v) of this section, the \$11,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$5,000 credited to the student's account is treated as a reimbursement or refund of payments for qualified tuition and related expenses because there is a reduction in charges for qualified tuition and related expenses equal to the \$5,000 credit due to Student A dropping to half-time for the 2016 fall semester. Under paragraph (b)(2)(iii) of this section, the \$10,000 payment received for qualified tuition and related expenses

during 2016 is reduced by the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2016. Therefore, University X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T.

*Example 2.* (i) The facts are the same as in *Example 1* of this paragraph (b)(2)(vii), except that Student A pays the full \$16,000 in late August 2016. In late September 2016, University X reduces the tuition charges by \$5,000 and issues a \$5,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the \$16,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$5,000 refund is treated as reimbursement or refund of payments for qualified tuition and related expenses because University X reduced the charges for qualified tuition and related expenses equal to the \$5,000 refund disbursed to the student due to dropping to half-time for the 2016 fall semester. Under paragraph (b)(2)(iii) of this section, the \$10,000 payment received for qualified tuition and related expenses during 2016 is reduced by the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2016. Therefore, University X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T.

*Example 3.* (i) The facts are the same as in *Example 1* of this paragraph (b)(2)(vii), except that Student A is enrolled full-time, and, in early September 2016, Student A decides to live at home with her parents. In late September 2016, University X adjusts Student A's account to eliminate room and board charges and issues a \$1,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the \$11,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$1,000 refund is not treated as reimbursement or refund of payments for qualified tuition and related expenses because University X has reduced room and board charges for the 2016 fall semester, rather than reducing charges for qualified tuition and related expenses for the 2016 fall semester. Therefore, under paragraph (b)(2)(iii) of this section, University X is required to report \$10,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T.

*Example 4.* (i) Student B enrolls in College Y as a full-time student for the 2017 spring semester. In early December 2016, College Y sends a bill to Student B for \$16,000 for the 2017 spring semester breaking out current charges as follows: \$10,000 for qualified tuition and related expenses and \$6,000 for room and board. In late December 2016, College Y receives a payment of \$16,000 from Student B. In mid-January 2017, after the 2017 spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2017, College Y credits Student B's account with \$5,000, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund to Student B. Thereafter, Student B's account reflects a positive

balance of \$5,000 due to the credit and there is no other activity on Student B's account until early August when College Y sends a bill for \$16,000 for the 2017 fall semester breaking out the current charges as follows: \$10,000 for qualified tuition and related expenses and \$6,000 for room and board. In early September 2017, College Y applies the \$5,000 positive account balance (credit) toward Student B's \$16,000 bill for the 2017 fall semester. In late September 2017, Student B pays \$6,000 towards the charges for the 2017 fall semester.

(ii) For calendar year 2016, under paragraph (b)(2)(v) of this section, \$10,000 of the \$16,000 payment received by College Y in December 2016 is treated as a payment of qualified tuition and related expenses. Therefore, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2016 on a 2016 Form 1098-T. In addition, College Y is required to indicate that \$10,000 of the payments reported on the 2016 Form 1098-T relate to an academic period that begins during the first three months of the next calendar year.

(iii) Under paragraph (b)(2)(vi) of this section, the \$5,000 credited to Student B's account in January 2017 is treated as a reimbursement or refund of qualified tuition and related expenses because there is a reduction in charges for qualified tuition and related expenses of \$5,000 for the 2017 spring semester. Under paragraph (b)(2)(iv) of this section, however, this reduction is a reimbursement or refund of qualified tuition and related expenses made during 2017 and, therefore, must be separately reported on the 2017 Form 1098-T. The 2016 Form 1098-T reporting \$10,000 of qualified tuition and related expenses for 2016 is unchanged.

(iv) Under paragraph (b)(2)(v) of this section, the \$5,000 positive account balance that is applied toward charges for the 2017 fall semester is treated as a payment made in 2017. Therefore, College Y received total payments of \$11,000 during 2017 (the \$5,000 credit plus the \$6,000 payment). Under paragraph (b)(2)(v) of this section, the \$11,000 of total payments made during 2017 are treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses for the 2017 fall semester. Therefore, for 2017, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2017 and a \$5,000 refund of payments of qualified tuition and related expenses reported for 2016 on the 2017 Form 1098-T.

*Example 5.* (i) Student C enrolls in College Z as a full-time student for the 2016 fall semester and the 2017 spring semester. Student C was not enrolled in, and did not attend, any institution of higher education prior to the 2016 fall semester. In August 2016, College Z sends a bill to Student C for \$11,000 for the 2016 fall semester. In December 2016, College Z sends a bill to Student C for \$11,000 for the 2017 spring semester. Qualified tuition and related expenses billed for each semester is \$6,000 and room and board billed for each semester is \$5,000. In September 2016, College Z receives a payment of \$11,000 which is applied toward the amount billed for Student C's attendance during the 2016 fall semester. In December 2016, College Z receives a payment of \$4,500 which is applied toward the

amount billed for Student C's attendance during the 2017 spring semester. In February 2017, College Z receives a payment of \$6,500, the remainder of the amount billed for enrollment during the 2017 spring semester.

(ii) On the 2016 Form 1098-T, College Z reports the payment of \$10,500 of qualified tuition and related expenses determined as follows: \$6,000 for the payment received in September 2016 with respect to the amount billed for qualified tuition and related expenses for the 2016 fall semester and \$4,500 for the payment received in December 2016 with respect to the amount billed for qualified tuition and related expenses for the 2017 spring semester. On the 2017 Form 1098-T, College Z reports the payment of \$1,500 of qualified tuition and related expenses received in February 2017 with respect to the amount billed for qualified tuition and related expenses for the 2017 spring semester.

*Example 6.* The facts are the same as *Example 5* of this paragraph (b)(2)(vii) except in January 2017 College Z receives payment of \$11,000 for the entire amount billed for the 2017 spring semester. On the 2016 Form 1098-T, College Z reports the payment of \$6,000 for the payment received in September 2016 with respect to the amount billed for qualified tuition and related expenses for the 2016 fall semester. On the 2017 Form 1098-T, College Z reports the payment of \$6,000 of qualified tuition and related expenses received in January 2017 with respect to the amount billed for qualified tuition and related expenses for the 2017 spring semester.

\* \* \* \* \*

(4) *Time and place for filing return*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, Form 1098-T must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which payments were received for qualified tuition or related expenses, or reimbursements, refunds, or reductions of such amounts were made. An institution or insurer must file Form 1098-T with the IRS according to the instructions for Form 1098-T.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) State that the statement reports total payments received by the institution for qualified tuition and related expenses during the calendar year, or the total reimbursements or refunds made by the insurer;

(B) State that, under section 25A and the regulations thereunder, the taxpayer may claim an education tax credit only with respect to qualified tuition and related expenses actually paid during the calendar year; and that the taxpayer may

not be able to claim an education tax credit with respect to the entire amount of payments received for qualified tuition and related expenses reported on the Form 1098-T for the calendar year;

(C) State that the amount of any scholarships or grants reported on the Form 1098-T for the calendar year and other similar amounts not reported on the Form 1098-T (because they are not administered and processed by the eligible educational institution as defined in paragraph (e)(1) of this section) that are allocated by the student to pay qualified tuition and related expenses may reduce the amount of any allowable education tax credit for the taxable year;

(D) State that even if the eligible educational institution applies scholarships or grants reported on the Form 1098-T for the calendar year to qualified tuition and related expenses, the student may, for tax purposes, be able to allocate all or a portion of the scholarships or grants to expenses other than qualified tuition and related expenses (and, therefore, forego having to reduce the amount of the education tax credit the student may claim) if the terms of the scholarship or grant permit it to be used for expenses other than qualified tuition and related expenses and the student includes the amount in income on his federal income tax return.

\* \* \* \* \*

(E) State that the amount of any reimbursements or refunds of payments received, or reductions in charges, for qualified tuition and related expenses, or any reductions to the amount of scholarships or grants, reported by the eligible educational institution with respect to the individual for a prior calendar year on Form 1098-T may affect the amount of any allowable education tax credit for the prior calendar year (and may result in an increase in tax liability for the year of the refund);

(F) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported on a Form 1098-T by an eligible educational institution or insurer may reduce the amount of an allowable education tax credit for a taxable year (and may result in an increase in tax liability for the year of the refund);

(G) State that the taxpayer should refer to relevant IRS forms and publications,

such as Publication 970, "Tax Benefits for Education," and should not refer to the institution or the insurer, for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(H) Include the name, address, and phone number of the information contact of the eligible educational institution or insurer that filed the Form 1098-T.

(2) *Time and manner for furnishing statement*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual for whom it is required to file a return, on or before January 31 of the year following the calendar year in which payments were received for qualified tuition and related expenses, or reimbursements, refunds or reductions of such amounts were made. If mailed, the statement must be sent to the individual's permanent address or the individual's temporary address if the institution or insurer does not know the individual's permanent address. If furnished electronically, the statement must be furnished in accordance with applicable regulations.

\* \* \* \* \*

(e) *Definitions.* The following definitions apply with respect to this section:

(1) *Administered and processed*—(i) *In general.* A scholarship or grant is "administered and processed" by an eligible educational institution if the institution receives payment of an amount (whether by cash, check, or other means of payment) that the institution knows or reasonably should know, is a scholarship or grant, regardless of whether the institution is named payee or co-payee of such amount and regardless of whether, in the case of a payment other than in cash, the student endorses the check or other means of payment for the benefit of the institution. For instance, Pell Grants, described in the Higher Education Act of 1965 (20 U.S.C. 1070), as amended, are administered and processed by an institution in all cases.

(ii) *Examples.* The following examples illustrate the definition in this paragraph (e)(1):

*Example 1.* University M received a Pell Grant on behalf of Student B, a student enrolled in a degree program at University M. University M provides all required notifications to and obtains all the necessary

paperwork from Student B and applies the Pell Grant to Student B's account. Because University M received the Pell Grant and University M knows or should know that the Pell Grant is a scholarship or grant, under paragraph (e)(1)(i) of this section, the Pell Grant is administered and processed by University M.

*Example 2.* University N receives a check from Organization Y made out to Student C. University N is not named as a payee on the check. The cover letter accompanying the check provides University N with sufficient information to reasonably know that the check represents payment of a scholarship that may be used to pay Student C's qualified tuition and related expenses. Under paragraph (e)(1)(i) of this section, the scholarship from Organization Y is administered and processed by University N. This is the case even though University N is not named on the check as a payee and regardless of whether Student C endorses the check over to University N.

(2) *Cost of attendance.* The term "cost of attendance" has the same meaning as section 472 of the Higher Education Act of 1965, 20 U.S.C. 10871l.

(f) \* \* \*

(3) \* \* \*

(ii) *Acting in a responsible manner.* An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (f)(3)(iii) of this section on or before December 31 of each year during which it receives payments of qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (f)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724-1(e) and (f) of this chapter for

the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (f)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724-1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

\* \* \* \* \*

(4) *No penalty imposed on eligible educational institutions that certify compliance with paragraph (f)(3) of this section at the time of filing the return.* In the case of returns required to be filed and statements required to be furnished after December 31, 2015, the IRS will not impose a penalty against an eligible educational institution under section 6721 or 6722 for failure to include the individual's correct TIN on the return or statement if the institution makes a true and accurate certification to the IRS under penalties of perjury (in the form and manner prescribed by the Secretary in publications, forms and instructions, or other published guidance) at the time of filing of the return that the institution complied with the requirements in paragraphs (f)(3)(ii) and (iii) of this section. Nothing in this paragraph (f)(4) prevents the IRS from imposing a penalty under section 6721 or 6722 if after the IRS receives the certification described in this paragraph (f)(4) the IRS determines that the requirements of paragraph (f)(3) of this section are not satisfied or the failure is unrelated to an incorrect or missing TIN for the individual for whom the institution is required to file a return or statement.

\* \* \* \* \*

(g) *Applicability date.* The rules in this section apply to information returns required to be filed, and statements required

to be furnished, after December 31, 2003, except that paragraphs (a)(2), (b)(1), (b)(2)(i), (b)(2)(ii)(D), (E), and (G) through (K), (b)(2)(iv) through (vii), (b)(4)(i) and (ii), (c)(1)(iii)(B) through (H), (e), and (f)(4) apply to information returns required to be filed, and statements required to be furnished, after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For information returns required to be filed, and statements required to be furnished, on or before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, § 1.6050S-1 (as contained in 26 CFR part 1, revised April 2014) applies.

#### PART 301—PROCEDURE AND ADMINISTRATION

Par. 8. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

Par. 9. Section 301.6724-1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 301.6724-1 *Reasonable cause.*

(a) \* \* \*

(1) \* \* \* For waiver in the case of eligible educational institutions required to report information under section 6050S with respect to qualified tuition and related expenses, see § 1.6050S-1(f) of this chapter.

\* \* \* \* \*

John Dalrymple,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on July 29, 2016, 11:15 a.m., and published in the issue of the Federal Register for August 2, 2016, 81 F.R. 50657)



# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the sub-

stance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.  
ER—Employer.

ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.

PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

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#### **2013-1**

Modified by  
Notice 2016-41, 2016-27 I.R.B. 5

#### **2013-1**

Superseded by  
Notice 2016-41, 2016-27 I.R.B. 5

### **Revenue Procedures:**

#### **2007-44**

Clarified by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2007-44**

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Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2007-44**

Superseded by  
Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2015-36**

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Rev. Proc. 2016-37, 2016-29 I.R.B. 136

#### **2016-3**

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Rev. Proc. 2016-40, 2016-32 I.R.B. 228

#### **2016-29**

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Rev. Proc. 2016-39, 2016-30 I.R.B. 164

### **Treasury Decisions:**

#### **2014-12**

Modified by  
T.D. 9776 2016-32 I.R.B. 222

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<sup>1</sup>A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2016–01 through 2016–26 is in Internal Revenue Bulletin 2016–26, dated June 27, 2016.



# **Internal Revenue Service**

## **Washington, DC 20224**

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## **INTERNAL REVENUE BULLETIN**

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

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## **We Welcome Comments About the Internal Revenue Bulletin**

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