

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also: Part I, §§ 139, 163, 164, 6041, 6041A, 6050H, 6721, 6722, 6724; §§ 1.6041-1, 1.6050H-1(e)(ii), 1.6050H-3(b))

Rev. Proc. 2021-47

SECTION 1. PURPOSE

This revenue procedure addresses the Federal income tax treatment and information reporting requirements for payments made to or on behalf of financially distressed individual homeowners by certain entities with funds allocated from the Homeowner Assistance Fund (HAF), which was established under section 3206 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (March 11, 2021) (ARP), in response to the coronavirus disease (COVID-19) pandemic.

SECTION 2. BACKGROUND

.01 On March 13, 2020, the President declared that the COVID–19 outbreak in the United States constituted a national emergency, beginning March 1, 2020. See Proclamation 9994, 85 Fed. Reg. 15337 (March 13, 2020). On February 24, 2021, the President extended the nationwide emergency due to COVID-19 beyond March 1, 2021. See Presidential Notice, 86 Fed. Reg. 11599 (February 24, 2021).

.02 As of April 17, 2020, the President had declared the COVID-19 pandemic a disaster warranting assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207, in all fifty States, the District of Columbia, and the United States territories, with an incident date beginning January 20, 2020, and continuing. See Letter to Federal Agencies on an Emergency Determination for the Coronavirus Disease 2019 (COVID-19) Pandemic Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Comp. Pres. Doc. (Mar. 13, 2020). See for example, District of Columbia; Major Disaster and Related Determinations, 85 Fed. Reg. 31534.

.03 In section 3206(a) of the ARP, Congress appropriated funds for fiscal year 2021 that are to remain available until September 30, 2025, to fund the HAF. The purpose of the HAF is to mitigate financial hardships associated with the COVID-19 pandemic by providing funds to the eligible entities listed in section 3206(b)(3) of the ARP for the purpose of paying certain expenses to prevent: homeowner mortgage delinquencies; defaults; foreclosures; loss of utilities or home energy services; and displacements of homeowners experiencing financial hardship after January 21, 2020.

.04 Section 3206(b)(3) of the ARP provides that eligible entities include: (1) any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico,

Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands; and (2) pursuant to section 3206(f) of the ARP, entities that are eligible for payments under section 501(b)(2)(A)(i) and (ii) of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (CAA), Public Law 116–260, 134 Stat. 1182 (December 27, 2020).

.05 Under the HAF program, funds are appropriated to eligible entities for the purpose of helping homeowners who satisfy the requirements of section 3206(c)(2) of the ARP with qualified expenses related to housing. Section 3206(b)(2) of the ARP provides a definition of dwelling which describes the property on which a homeowner could qualify for payments from the HAF. Sections 3206(b)(1) and 3206(b)(4) of the ARP define the types of mortgages on such dwellings that qualify for payments from the HAF.

.06 Section 3206(c)(1) of the ARP sets forth a non-exclusive list of qualified expenses, which include: mortgage payment assistance; financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default; principal reduction; facilitating interest rate reductions; and payment assistance for: (a) utilities, including electric, gas, home energy, and water; (b) internet service, including broad band internet access service, as defined in section 8.1(b) of title 47, Code of Federal Regulations (or any successor regulation); (c) homeowner's insurance, flood insurance, and mortgage insurance; and (d) homeowner's association, condominium association fees, or common charges. In addition, section 3206(c)(1)(G) of the ARP provides that HAF funds may be used for any other assistance to promote housing stability for homeowners, including preventing

mortgage delinquency, default, foreclosure, post-foreclosure eviction of a homeowner, or the loss of utility or home energy services, as determined by the Secretary of the Treasury (Secretary).

.07 Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived.

.08 Section 139(a) of the Code provides that gross income does not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b)(4) provides that the term qualified disaster relief payment includes any amount paid to or for the benefit of an individual if such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare, but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise. Section 139(c) defines a qualified disaster, for purposes of § 139(b)(4), to mean a federally declared disaster within the meaning of § 165(i)(5)(A) of the Code, or a disaster which is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government, or agency or instrumentality thereof.

.09 Section 139(h) provides that, notwithstanding any other provision of subtitle A of the Code, no deduction or credit is allowed (to the person for whose benefit a qualified disaster relief payment or qualified disaster mitigation payment is made) for, or by reason of, any expenditure to the extent of the amount excluded under § 139 with respect to such expenditure.

.10 Section 163(h)(2)(D) of the Code generally allows taxpayers to deduct as personal interest amounts paid as qualified residence interest, as defined in § 163(h)(3), during the taxable year. For this purpose, qualified residence interest generally includes interest on acquisition indebtedness and certain home equity indebtedness (subject to certain dollar limitations), and may include mortgage insurance premiums treated as interest, as defined in § 163(h)(3)(E), (collectively, mortgage interest) with respect to any qualified residence, as defined in § 163(h)(4).

.11 Section 164(a) of the Code generally allows taxpayers to deduct certain taxes paid during the taxable year. For example, State and local real property taxes are types of taxes that may be deducted under § 164(a). However, § 164(b)(6)(B) provides that, in the case of an individual, for taxable years beginning after December 31, 2017, and before January 1, 2026, the aggregate amount of taxes taken into account under §§ 164(a)(1), (2), and (3) and 164(b)(5) for any taxable year cannot exceed \$10,000 (\$5,000 in the case of a married individual filing a separate return).

.12 Section 3 of this revenue procedure provides an optional safe harbor method for homeowners to compute their itemized deductions for mortgage interest and real property taxes when in the same taxable year the homeowner has received, or benefited from, a HAF payment from a State, as defined in section 3.02(6) of this revenue procedure, that may be used to pay a portion of a homeowner's mortgage interest and/or real property taxes and the homeowner has also paid a portion of the mortgage interest and real property taxes with funds from the Homeowner's own sources, as defined in section 3.02(3) of this revenue procedure. A homeowner is not permitted to deduct under § 163 or § 164, as applicable, an amount greater than the

amount the homeowner has paid from the Homeowner's own sources. Section 4 of this revenue procedure provides guidance to States, as defined in section 3.02(6) of this revenue procedure, and mortgage lenders and servicers regarding information reporting requirements relating to certain HAF payments.

.13 The safe harbor provided in section 3 of this revenue procedure is similar to the safe harbor provided in Notice 2018-63, 2018-34 I.R.B. 318, for the Housing Finance Agency Innovation Fund for the Hardest Hit Markets (HFA Hardest Hit Fund), authorized by section 109 of the Emergency Economic Stabilization Act, Division A of Pub. L. 110-343, 112 Stat. 3774 (2008). Funding under HFA Hardest Hit Fund is available for, but not limited to, programs involving the following transactions: mortgage modifications; principal forbearance to facilitate additional mortgage modifications; short sales and deeds-in-lieu of foreclosure; unemployment programs; principal reductions for homeowners with severe negative equity; and second-lien reductions and modifications.

SECTION 3. SAFE HARBOR METHODS FOR COMPUTING DEDUCTIONS FOR QUALIFIED RESIDENCE MORTGAGE INTEREST AND REAL ESTATE TAXES

.01 Scope. This revenue procedure applies to a Homeowner, as defined in section 3.02(2) of this revenue procedure, if:

(1) The Homeowner receives a payment from, or a payment is made on the Homeowner's behalf by, a State, as defined in section 3.02(6) of this revenue procedure;

(2) The payment is made with funds from the HAF;

(3) The payment is used to pay qualified expenses, as defined in section 3.02(4) of this revenue procedure, of the Homeowner, and at least one of the

expenses is a qualified housing payment expense, as defined in section 3.02(5) of this revenue procedure;

(4) The Homeowner has also paid a portion of the qualified housing payment expense from the Homeowner's own sources, as defined in section 3.02(3) of this revenue procedure;

(5) The Homeowner itemizes deductions on the Homeowner's Federal income tax return;

(6) The Homeowner would meet the requirements of § 163(h)(3) to deduct qualified mortgage interest expenses, defined in section 3.02(5)(a) of this revenue procedure, if the Homeowner paid the qualified mortgage interest expenses from the Homeowner's own sources; and

(7) The Homeowner would meet the requirements of § 164(a)(1) to deduct qualified real property tax expenses, defined in section 3.02(5)(b) of this revenue procedure (determined without regard to § 164(b)(6)(B)), if the Homeowner paid the qualified real property tax expenses from the Homeowner's own sources.

.02 Definitions.

(1) HAF payment. A HAF payment is a payment by a State with funds allocated from the HAF to pay qualified expenses of a Homeowner.

(2) Homeowner. The term "Homeowner" means an individual homeowner who satisfies the requirements of section 3206(c)(2) of the ARP and who resides in a State.

(3) Homeowner's own sources. Payments are considered to be made from a Homeowner's own sources if they are out-of-pocket payments that are not made from the HAF or other Federal, State or local government financial assistance programs.

(4) Qualified expense. The term “qualified expense” has the same meaning as in section 3206(c)(1) of the ARP. For example, a qualified expense includes, but is not limited to, mortgage payment assistance; financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing related costs related to a period of forbearance, delinquency, or default; principal reduction; facilitating interest rate reductions; and payment assistance for: (a) utilities, including electric, gas, home energy, and water; (b) internet service, including broad band internet access service, as defined in section 8.1(b) of title 47, Code of Federal Regulations (or any successor regulation); (c) homeowner’s insurance, flood insurance, and mortgage insurance; and (d) homeowner’s association, condominium association fees, or common charges.

(5) Qualified housing payment expense. A qualified housing payment expense means:

(a) Qualified mortgage interest expenses, which are qualified residence interest (defined in § 163(h)(3)) and mortgage insurance premiums treated as interest (defined in § 163(h)(3)(E)) that are related to a mortgage (defined in section 3206(b)(4) of the ARP) on a qualified residence (defined in § 163(h)(4)) that is a principal residence; and

(b) Qualified real property tax expenses, which are State and local (but not foreign) taxes (within the meaning of § 164(a)) assessed on a principal residence.

(6) State. The term “State” includes all fifty states of the United States and the District of Columbia and any agency or instrumentality of the foregoing. Unlike section 3206(b)(7) of the ARP, the term “State” excludes the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

.03 In general. The COVID-19 pandemic is a qualified disaster within the meaning of § 139(c). A HAF payment is a qualified disaster relief payment within the meaning of § 139(b)(4). As a result, such payments are not included in the Homeowner's gross income. In accordance with § 139(h), a Homeowner that receives a HAF payment, or on whose behalf a HAF payment is made, for qualified expenses cannot take a deduction or credit with respect to such expenses.

.04 Safe harbor methods.

(1) Safe harbor for allocation of HAF payments. A Homeowner within the scope of section 3.01 of this revenue procedure may first allocate the HAF payments to qualified expenses that are not qualified housing payment expenses before allocating the remaining portion of the HAF payments to qualified housing payment expenses.

(2) Deduction safe harbor. For taxable years beginning on or after January 1, 2021, and before January 1, 2026, a Homeowner within the scope of section 3.01 of this revenue procedure may use this safe harbor to calculate the Homeowner's itemized deduction for qualified mortgage interest expenses and/or qualified real property tax expenses, as applicable. The Homeowner may deduct as qualified mortgage interest expenses or qualified real property tax expenses (subject to the limitations in § 163(h)(3)(E) and § 164(b)(6)(B)) on the Homeowner's Federal income tax return for taxable years 2021 through 2025, the lesser of:

(a) The sum of all payments the Homeowner actually makes from the Homeowner's own sources during the taxable year to the mortgage servicer; or

(b) The sum of amounts shown on Form 1098, Mortgage Interest Statement, for qualified housing payment expenses.

SECTION 4. INFORMATION REPORTING OBLIGATIONS

.01 Information reporting by States.

(1) Payments to or on behalf of Homeowners - reporting to Homeowners.

Section 6041 of the Code requires every person engaged in a trade or business (including the United States or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of the foregoing) to file an information return for each calendar year in which the person makes in the course of its trade or business payments to another person of fixed or determinable income aggregating \$600 or more, and to furnish a written statement to that person. See § 6041(a) and (d) and § 1.6041-1 of the Income Tax Regulations. Generally, such payments are reported on Form 1099-MISC, Miscellaneous Information. Because HAF payments made to or on behalf of Homeowners are excluded from the gross income of the Homeowners, they are not fixed or determinable income under § 6041 and information reporting for such payments is not required.

(2) Payments to third parties on behalf of Homeowners – reporting to third parties.

(a) HAF payments that are made directly to third parties on behalf of Homeowners, such as payments made to insurance companies and homeowners associations, are generally reportable to those third parties under § 6041 if they constitute fixed or determinable income to the third party and the aggregate payments meet the \$600 reporting threshold. Exceptions to the reporting requirements, including an exception for payments to exempt recipients such as corporations, are provided in § 1.6041-3.

(b) If a State makes a HAF payment to a service provider on behalf of a Homeowner, such as for essential repairs, that payment would be reportable under § 6041A of the Code. Section 6041A requires a service-recipient engaged in a trade or business who pays a person remuneration for services aggregating \$600 or more to file a return reporting such remuneration, and to furnish a written statement to that person. Generally, such payments are reported on Form 1099-NEC, Nonemployee Compensation. The exceptions set forth in § 1.6041-3 apply. See Notice 2001-38, 2001-1 I.R.B. 1334 (June 11, 2001).

.02. Information reporting by lender or mortgage servicer.

(1) Reporting of mortgage interest received. Section 6050H(a) of the Code requires every person engaged in a trade or business to file an information return for each calendar year in which the person receives in the course of its trade or business payments from an individual of interest on a mortgage aggregating \$600 or more. Form 1098, Mortgage Interest Statement, is used for this reporting. Section 6050H(d) further requires that a written statement be furnished to that individual. The regulations provide that interest received from a governmental unit or an agency or instrumentality of a governmental unit is not interest received on a mortgage. Section 1.6050H-1(e)(3)(ii). Therefore, lenders who receive a Homeowner's mortgage payments directly from a State should not report the interest received from the State on Form 1098 as interest received on the Homeowner's mortgage.

(2) Reporting mortgage insurance premiums received. Section 6050H(h) and § 1.6050H-3 also provide for the reporting of mortgage insurance premiums treated as interest, defined in § 163(h)(3)(E), received by a person, in the course of a trade or

business, from any individual. Mortgage insurance premiums treated as interest aggregating \$600 or more for any calendar year, during periods to which § 163(h)(3)(E) applies, must be reported, without regard to source. See § 1.6050H-3(b). Form 1098 is used for this reporting.

(3) Information Reporting penalties. Section 6721 of the Code imposes penalties on a person for failing to file an information return, failing to include all required information, or including incorrect information. Section 6722 of the Code imposes penalties on a person for failing to furnish a payee statement, failing to include all required information, or including incorrect information on a payee statement. Section 6724 of the Code provides that these penalties will not be imposed if the failure is due to reasonable cause and not due to willful neglect. If a lender files and furnishes a Form 1098 that includes mortgage interest received directly from the State, thereby reporting an incorrect amount of interest on the information return, the lender will not be subject to penalties under §§ 6721 and 6722 so long as the lender notifies the Homeowner that the amounts reported on the Form 1098 are overstated because they include payments from a governmental unit or an agency or instrumentality of a governmental unit, and sets forth the amount of the overstatement. Such notification to the Homeowner should be made at the time the Form 1098 is furnished or within 30 days thereafter, and can be provided in a separate statement (written or electronic), or included on Form 1098 in Box 10 labeled "Other".

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on November 8, 2021, and applies to qualified expenses paid after January 21, 2020.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Theresa Melchiorre of the Office of the Associate Chief Counsel (Income Tax & Accounting) and Nancy Rose of the Office of the Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Ms. Melchiorre at (202) 317-4643 (not a toll-free call) or for questions related to information reporting, Ms. Rose at (202) 317-5147 (not a toll-free call).