

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-105316-98]

RIN 1545-AW67

Information Reporting for Payments of Qualified Tuition and Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and requests to videoconference the public hearing.

SUMMARY: This document contains proposed regulations relating to the information reporting requirements under section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans, including the filing of information returns on magnetic media. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations provide guidance to eligible educational institutions and insurers receiving payments of, or making reimbursements or refunds of, qualified tuition and related expenses. The regulations also provide guidance to payees receiving interest payments on qualified education loans. This document also announces that a public hearing will be held

on the proposed regulations upon request and that persons outside the Washington, DC, area who wish to testify at the hearing may request that the IRS videoconference the hearing to their sites.

DATES: Written or electronically generated comments must be received by September 14, 2000. Requests to videoconference the hearing to other sites must be received by August 15, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-105316-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-105316-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Taxpayers may also submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov./tax_regs/regslst.html. The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Donna Welch, (202) 622-4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180; concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the Internal Revenue Service, Martinsburg Computing Center, (304) 263-8700 (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 for review 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 Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by August 15, 2000. 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;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

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 this proposed regulation is in §§1.6050S-1 and 1.6050S-2. In general, eligible educational institutions and insurers must file a Form 1098-T, "Tuition Payments Statement," with the IRS for each individual with respect to whom payments of qualified tuition and related expenses were received, or reimbursements or refunds of such expenses were made, and furnish an information statement to such individual. This collection of information is required in order to assist the IRS and taxpayers in calculating the amount of any education tax credit allowable under section 25A. In addition, payees who receive from any payor interest payments aggregating \$600 or more on one or more qualified education loans must file a Form 1098-E, "Student Loan Interest Statement," with the IRS and furnish an information statement to the payor. This collection of information is required in order to assist the IRS and taxpayers in calculating the amount of any student loan interest deduction allowable under section 221. The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

Estimated total annual reporting burden for 1998 for Form 1098-T:
2,419,438 hours.

Estimated average annual burden hours per response for
Form 1098-T: 7 minutes.

Estimated number of responses for 1998 for Form 1098-T:

20,738,039.

Estimated annual frequency of responses: Once.

Estimated total annual reporting burden for 1998 for Form 1098-E:
437,691 hours.

Estimated average annual burden hours per response for
Form 1098-E: 3 minutes.

Estimated number of responses for 1998 for Form 1098-E:
8,753,819.

Estimated annual frequency of responses: Once.

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.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

1. Information Reporting Requirements

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to information reporting requirements under section 6050S. The Taxpayer Relief Act of 1997 (Public Law 105-34 (111 Stat. 788) (TRA '97)) added section 25A of the Internal Revenue Code to provide the Hope Scholarship Credit and the Lifetime Learning Credit (education tax credits).

In general, the Hope Scholarship Credit and the Lifetime Learning Credit allow certain taxpayers who pay qualified tuition and related expenses to an eligible educational institution to claim a nonrefundable credit against their Federal income tax liability. On January 6, 1999, the IRS issued proposed regulations under section 25A. See 64 FR 794 (1999).

TRA '97 also added section 221 of the Internal Revenue Code to allow certain taxpayers who pay interest on qualified education loans to claim a Federal income tax deduction for their interest payments. In general, a deduction is allowed for interest payments made during the first 60 months in which interest payments are required on a qualified education loan. However, no interest deduction is allowed for any interest paid before January 1, 1998. On January 21, 1999, the IRS issued proposed regulations under section 221. See 64 FR 3257 (1999).

In addition, TRA '97 added section 6050S of the Internal Revenue Code, which requires eligible educational institutions to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any education tax credit allowable under section 25A. Similarly, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified tuition and related expenses to file information returns and to furnish written information statements. Lastly, section 6050S requires certain payees who receive payments of interest on one or more qualified

education loans to file information returns and to furnish written information statements to assist taxpayers and the IRS in determining any interest deduction allowable under section 221.

The IRS has published several notices prescribing limited information reporting for eligible educational institutions for the years 1998, 1999, and 2000. On December 22, 1997, the IRS published Notice 97-73 (1997-2 C.B. 335), which describes the information that an eligible educational institution must report for 1998. On September 8, 1998, the IRS published Notice 98-46 (1998-36 I.R.B. 21), which extends the application of Notice 97-73 to information returns required under section 6050S for 1999. On December 7, 1998, the IRS published Notice 98-59 (1998-49 I.R.B. 16), which modifies the prior Notices by providing that an institution is not required to file information returns for students who are: (1) enrolled during the year only in courses for which the student receives no academic credit; or (2) nonresident alien students, unless the student requests the institution to report. On July 26, 1999, the IRS published Notice 99-37 (1999-30 I.R.B. 124), which extends the application of Notice 97-73 (as modified) to information returns required under section 6050S for 2000.

In addition, the IRS has published several notices describing the information reporting for certain payees who receive interest on qualified education loans during the years 1998, 1999, and 2000. On January 20, 1998, the IRS published Notice 98-7 (1998-3 I.R.B. 54), which describes the information

reporting required under section 6050S for 1998. On November 16, 1998, the IRS published Notice 98-54 (1998-46 I.R.B. 25), which modifies Notice 98-7 to reflect a technical change to section 221 made by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206 (112 Stat. 685)), and extends the application of Notice 98-7 (as modified) to information reporting required under section 6050S for 1999. On July 26, 1999, the IRS published Notice 99-37, which extends the application of Notice 98-7 (as modified) to information returns required under section 6050S for 2000.

2. Magnetic Media Requirements

This document also contains proposed amendments to the Regulations on Procedure and Administration (26 part 301) relating to the filing of information returns on magnetic media under section 6011(e). Section 6011(e) authorizes the Secretary to prescribe regulations providing the standards for determining which returns must be filed on magnetic media. Section 6011(e)(2)(A) provides that the Secretary shall not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Section 6011(e)(2)(B) provides that, in prescribing regulations, the Secretary shall consider the ability of the taxpayer to comply at reasonable cost with the requirements of the regulations.

Explanation of Provisions

1. Information Reporting for Payments and Reimbursements or Refunds of Qualified Tuition and Related Expenses

The proposed regulations require an eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) that receives payments of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) with respect to any individual, or makes reimbursements or refunds of such amounts, to file a Form 1098-T with the IRS. In addition, the proposed regulations require any person engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (an insurer) to file a Form 1098-T with the IRS.

Under the proposed regulations, the following information must be reported on Form 1098-T: (a) the name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution or the insurer; (b) the name, address, and TIN of the individual with respect to whom payments of qualified tuition and related expenses were received, or reimbursements or refunds were made; (c) the aggregate amount of payments of qualified tuition and related expenses from any source that the institution received with respect to the individual during the calendar year; (d) the aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the institution or insurer made with respect to the individual during the calendar year; (e) the aggregate amount of any scholarships or grants that the institution processed during the calendar year for the payment of the individual's costs of

attendance; (f) an indication by the institution 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; (g) an indication by the institution whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and (h) any other information required by Form 1098-T and its instructions.

The proposed regulations reserve the requirement in section 6050S(b)(2)(B) that an institution or insurer obtain and report the name, address, and TIN of any taxpayer who will claim the individual with respect to whom payments are received, or reimbursements or refunds are made, as a dependent for purposes of the deduction allowable under section 151 for the taxable year. Thus, under the proposed regulations, there is no requirement to obtain and report the name, address, and TIN of any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return.

Consistent with the exceptions to required reporting in Notice 98-59, the proposed regulations provide that an institution or insurer is not required to file a Form 1098-T for an individual who is a nonresident alien, unless the individual requests that the institution or insurer report. In addition, an institution is not required to file a Form 1098-T for an individual who is enrolled during the calendar year only in

courses for which the individual receives no academic credit. Under the proposed regulations, the term academic credit means credit awarded by an institution for the completion of coursework leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

The proposed regulations provide that, in determining the payments for qualified tuition and related expenses that an institution must report, payments received with respect to an individual 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 as payments of qualified tuition and related expenses up to the total amount billed for such expenses.

The proposed regulations provide that an institution or insurer must furnish an information statement to each individual for whom it is required to file a Form 1098-T. The proposed regulations provide that the statement must include the information included on the Form 1098-T filed with the IRS and a legend that identifies the statement as important tax information being furnished to the IRS. The statement must include instructions that state that the taxpayer may not be able to claim an education tax credit under section 25A and the regulations thereunder with respect to the total payments of qualified tuition and related expenses reported for the calendar year. The instructions must state that the amount of the scholarships, grants, reimbursements, or refunds reported for the

calendar year and other similar amounts not reported (because they are not processed by the institution) may reduce the amount of any allowable education tax credit for the taxable year or a prior taxable year. The instructions must state that the taxpayer should refer to relevant IRS forms and publications (such as Form 8863, "Education Credits," and Publication 970, "Tax Benefits for Higher Education") for explanations relating to the eligibility requirements for, and the calculation of, any allowable education tax credit.

The proposed regulations reserve the requirement in section 6050S(d) that an institution or insurer furnish a statement to any taxpayer who will claim the individual with respect to whom payments are received, or reimbursements or refunds are made, as a dependent for purposes of the deduction allowable under section 151 for the taxable year. Thus, under the proposed regulations, there is no requirement to furnish a statement to any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return.

The proposed regulations describe the rules for the time and manner of filing information returns with the IRS and furnishing information statements. Forms 1098-T must generally be filed with the IRS on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the payments were received, or reimbursements or refunds were made. In general, an institution or insurer must furnish an information statement to each individual with respect to whom

payments of qualified tuition and related expenses were received, or reimbursements or refunds were made, on or before January 31 of the year following the calendar year in which payments were received, or reimbursements or refunds were made. Although the regulations do not specifically address the issue of electronic transmission of information statements, the IRS is currently studying the issue. Accordingly, the IRS may address that issue in future guidance.

Under the proposed regulations, an institution or insurer may be subject to a penalty under section 6721 for failure to file correct Forms 1098-T and a penalty under section 6722 for failure to furnish correct information statements. The proposed regulations generally follow the rules under section 6724 for waivers of penalties for certain failures due to reasonable cause. The regulations also provide special rules for soliciting an individual's TIN. An institution or insurer that complies with those rules will not be penalized for any failure to obtain or include a correct TIN on a Form 1098-T or the related information statement.

2. Information Reporting for Payments of Interest on Qualified Education Loans

The proposed regulations require any person engaged in a trade or business that receives from any payor interest of \$600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and the regulations thereunder) (a payee) to file a Form 1098-E with the IRS. Under the proposed regulations, a payee must report the name, address,

and taxpayer identification number (TIN) of the payee; the name, address, and TIN of the payor; and the aggregate amount of interest received during the calendar year from the payor. The payee may be the lender, the holder of the loan, or the loan servicer. The regulations define the payor as the individual carried on the books and records of the payee as the borrower on a qualified education loan. If there are multiple borrowers, the principal borrower indicated on the payee's books and records is treated as the payor for purposes of section 6050S.

Under the proposed regulations, a payee is required to report only interest payments received on a qualified education loan during the first 60 months in which interest payments are required on the loan. The proposed regulations, in general, incorporate the rules of section 221 and the regulations thereunder to determine the 60-month period for which interest payments must be reported. Under the proposed regulations, the 60-month period generally begins on the date the qualified education loan first enters repayment status. However, for qualified education loans made before January 1, 1998, if the payee does not know, and does not have reason to know, the date on which the loan entered repayment status, then, for information reporting purposes, the 60-month period begins on January 1, 1998. For defaulted loans made before January 1, 1998, if the payee does not know, and does not have reason to know, the date on which the loan entered repayment status, then, for information reporting purposes, the 60-month period begins on the earlier of

the date the loan went into default or January 1, 1998. If the payee does not know, and does not have reason to know, either the date the loan entered repayment status or the default date, then, for information reporting purposes, the 60-month period begins on January 1, 1998.

The proposed regulations provide that, in determining the aggregate amount of interest payments to be reported by a payee, the term interest includes stated interest, loan origination fees (other than any fees for services), and capitalized interest as described in proposed regulations §1.221-1(h)(2). However, in order to provide payees sufficient time to develop systems to report amounts other than stated interest, the proposed regulations do not require payees to report loan origination fees and capitalized interest for loans made before January 1, 2002.

The proposed regulations provide rules to determine which loans are qualified education loans subject to information reporting under section 6050S. The regulations provide that, unless the loan is subsidized, guaranteed, financed, or otherwise treated as a student loan under a program of the Federal, state, or local government or an eligible educational institution, the payee must request and obtain a certification from the payor that the loan will be used solely to pay qualified higher education expenses. The regulations provide that the payee may use Form W-9S, "Request for Student's Social Security Number and Borrower Certification," to request and obtain the certification. If a payee fails to obtain a required certification, the loan is not

treated as a qualified education loan for purposes of section 6050S.

The proposed regulations provide that a payee must furnish an information statement to each payor for whom it is required to file a Form 1098-E. The proposed regulations provide that the statement must include the information included on the Form 1098-E filed with the IRS and a legend that identifies the statement as important tax information being furnished to the IRS. The statement must include instructions that state that, under section 221 and the regulations thereunder, the payor may not be able to deduct the full amount of interest reported on the statement. The instructions must state that interest payments are deductible only during the first 60-months that interest payments are required. If the payee reports only stated interest, the instructions must state that the payor may be able to deduct additional amounts (e.g., certain loan origination fees and capitalized interest) not reported on the statement. The instructions must also state that the payor should refer to relevant IRS forms and publications (such as Publication 970) for explanations relating to the eligibility requirements for, and the calculation of, any allowable interest deduction on qualified education loans.

The proposed regulations describe the rules for the time and manner of filing information returns with the IRS and furnishing information statements to payors. Forms 1098-E must generally be filed with the IRS on or before February 28 (March 31 if filed

electronically) of the year following the calendar year in which the interest payments were received. In general, a payee must furnish an information statement to the payor on or before January 31 of the year following the calendar year in which interest payments were received. Although the regulations do not specifically address the issue of electronic transmission of information statements, the IRS is currently studying the issue. Accordingly, the IRS may address that issue in future guidance.

Under the proposed regulations, a payee may be subject to a penalty under section 6721 for failure to file correct Forms 1098-E and a penalty under section 6722 for a failure to furnish correct information statements. The proposed regulations generally follow the rules under section 6724 for waivers of penalties for certain failures due to reasonable cause. The regulations also provide special rules for soliciting the payor's TIN. A payee that complies with those rules will not be penalized for any failure to obtain or include a correct TIN on a Form 1098-E or the related information statement.

3. Requirement to File Information Returns on Magnetic Media

The proposed regulations amend the regulations under section 6011(e) to require eligible educational institutions, insurers, and payees who are required to file 250 or more Forms 1098-T or 1098-E to file on magnetic media. Under §301.6011-2(a)(1), the term magnetic media means any media permitted under applicable regulations, revenue procedures, or publications, including magnetic tape, tape cartridge, and diskette, as well as other

media (such as electronic filing).

Proposed Effective Date

These regulations are proposed to apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2001. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in the proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory 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. An initial regulatory flexibility analysis has been prepared for this notice of proposed rulemaking under 5 U.S.C. 603 and is set forth under the heading "Initial Regulatory Flexibility Analysis" in this preamble. 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.

Initial Regulatory Flexibility Analysis

The collection of information contained in §§1.6050S-1(a) and (b) and 1.6050S-2(a) and (c) is needed to assist the IRS and taxpayers in determining the amount of any education credit

allowable under section 25A and the amount of any interest deduction allowable under section 221. The objectives of the proposed regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the proposed regulations may apply are small eligible educational institutions (such as colleges and universities), certain insurers who reimburse educational expenses, and certain payees who receive payments of interest on qualified education loans. As of the end of December 1999, a total of 20,738,039 Forms 1098-T were filed with the IRS for 1998 and a total of 8,753,819 Forms 1098-E were filed with the IRS for 1998. The current estimated reporting burden is 7 minutes per Form 1098-T and 3 minutes per Form 1098-E. No special professional skills are necessary for preparation of the reports or records. There are no known Federal rules that duplicate, overlap, or conflict with these proposed regulations. The regulations proposed are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the proposed regulations requiring filing Forms 1098-T and 1098-E on magnetic media impose no additional reporting or recordkeeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that an eligible educational institution, insurer, or payee is not required to file Forms 1098-T or 1098-E on magnetic media unless required to file at least 250 or more returns during

the year. Finally, the economic impact caused by requiring Forms 1098-T and 1098-E on magnetic media should be minimal because most institution's, insurer's, and payee's operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a showing of hardship. The waiver authority will be exercised so as not to unduly burden institutions, insurers, and payees lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The IRS recognizes that persons outside the Washington, DC, area may also wish to testify at the public hearing through videoconferencing. Requests to include videoconferencing sites must be received by August 15, 2000. If the IRS receives sufficient indications of

interest to warrant videoconferencing to a particular city, and if the IRS has videoconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests.

The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in a document in the **Federal Register**.

Drafting Information

The principal author of the regulations is Donna Welch, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

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 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6050S-1 also issued under section 26 U.S.C. 6050S(g).

Section 1.6050S-2 also issued under section 26 U.S.C.

6050S(g). * * *

Par. 2. Sections 1.6050S-0 through 1.6050S-2 are added to read as follows:

§1.6050S-0 Table of contents

This section lists captions contained in §§1.6050S-1 and 1.6050S-2.

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- (a) Information reporting requirement.
 - (1) In general.
 - (2) Exceptions.
 - (i) No reporting for nonresident alien individuals.
 - (ii) No reporting for individuals enrolled in noncredit courses.
 - (A) In general.
 - (B) Academic credit defined.
 - (C) Example.
 - (b) Requirement to file return.
 - (1) Form of return.
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 - (i) In general.
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 - (3) Time and place for filing return.
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 - (ii) Return for nonresident alien individual.
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 - (1) In general.
 - (2) Statement furnished to any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return. [Reserved]
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 - (i) In general.
 - (ii) Statement to nonresident alien individual.
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 - (5) Copy of Form 1098-T.

- (d) Special rules.
 - (1) Payments received for qualified tuition and related expenses determined.
 - (i) In general.
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 - (2) Payments of qualified tuition and related expenses received or collected on behalf of an institution.
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 - (3) Governmental units.
 - (e) Penalty provisions.
 - (1) Failure to file correct returns.
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 - (i) In general.
 - (ii) Acting in a responsible manner.
 - (iii) Manner of soliciting TIN.
 - (4) Requirement to request and obtain TIN of any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return. [Reserved]
 - (5) Failure to furnish TIN.
 - (f) Effective date.

§1.6050S-2 Information reporting for payments of interest on qualified education loans.

- (a) Information reporting requirement.
 - (1) In general.
 - (2) Reporting period.
 - (i) In general.
 - (ii) Calculation of 60-month period.
 - (iii) Transitional rules for reporting on loans made before January 1, 1998.
 - (b) Definitions.
 - (c) Requirement to file return.
 - (1) Form of return.
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 - (d) Requirement to furnish statement.
 - (1) In general.
 - (2) Time and manner for furnishing statement.
 - (i) In general.
 - (ii) Extensions of time.
 - (3) Copy of Form 1098-E.
 - (e) Special rules.
 - (1) Transitional rule for reporting of loan origination fees and capitalized interest.
 - (2) Qualified education loan certification.
 - (3) Payments of interest received or collected by one or more

persons.

- (i) In general.
- (ii) Exception.
- (4) Reporting by foreign persons.
- (5) Governmental units.
- (f) Penalty provisions.
 - (1) Failure to file correct returns.
 - (2) Failure to furnish correct information statements.
 - (3) Waiver of penalties for failures to include a correct TIN.
- (i) In general.
- (ii) Acting in a responsible manner.
- (iii) Manner of soliciting TIN.
- (4) Failure to furnish TIN.
- (g) Effective date.

§1.6050S-1 Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses.

- (a) Information reporting requirement--(1) In general.

Except as provided in paragraph (a)(2) of this section, any eligible educational institution (as defined in section 25A(f)(2) and §1.25A-2(b))(an institution) that receives payments of qualified tuition and related expenses (as defined in section 25A(f)(1) and §1.25A-2(d)) from any source for any calendar year, or that makes reimbursements or refunds (or similar payments) of such amounts, and any person engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (an insurer) must--

- (i) File an information return, as described in paragraph (b) of this section, with the Internal Revenue Service (IRS) with respect to each individual for whom such payments are received, or reimbursements or refunds are made; and

- (ii) Furnish a statement, as described in paragraph (c) of

this section, to each individual described in paragraph (c) of this section.

(2) Exceptions--(i) No reporting for nonresident alien individuals. The information reporting requirements of this section do not apply with respect to any individual who is a nonresident alien (as defined in section 7701(b) and §301.7701(b)-3 of this chapter) during the calendar year, unless the individual requests the institution or insurer to report. If a nonresident alien individual requests an institution or insurer to report, the institution or insurer must comply with the requirements of this section for the year with respect to which the request is made and all years after such request in which it receives payments of qualified tuition and related expenses or makes reimbursements or refunds of such amounts with respect to such individual.

(ii) No reporting for individuals enrolled in noncredit courses--(A) In general. The information reporting requirements of this section do not apply with respect to any individual who is enrolled during the calendar year only in courses for which the individual receives no academic credit.

(B) Academic credit defined. Academic credit means credit awarded by an institution for the completion of coursework leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

(C) Example. The following example illustrates the rules of this paragraph (a)(2)(ii):

Example. Student A, a medical doctor, takes a course at

University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education division. University X does not award Student A credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. Under this paragraph (a)(2)(ii), University X is not subject to the information reporting requirements of section 6050S and this section for the medical education course taken by Student A.

(b) Requirement to file return--(1) Form of return. Except as otherwise provided in this section, an institution or insurer must file an information return for each individual with respect to whom payments of qualified tuition and related expenses are received, or reimbursements or refunds of such amounts are made, during the calendar year on Form 1098-T, "Tuition Payments Statement." An institution or insurer may use a substitute for Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms.

(2) Information included on return--(i) In general. An institution or insurer must include on Form 1098-T--

(A) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the institution or the insurer;

(B) The name, address, and TIN of the individual with respect to whom payments of qualified tuition and related expenses were received, or reimbursements or refunds of such amounts were made;

(C) The aggregate amount of payments of qualified tuition and related expenses from any source that the institution received with respect to the individual during the calendar year;

(D) The aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the institution or insurer made with respect to the individual during the calendar year;

(E) The aggregate amount of any scholarships or grants that the institution processed during the calendar year for the payment of the individual's costs of attendance;

(F) An indication by the institution 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 §1.25A-3(d)(1)(ii));

(G) An indication by the institution whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(H) Any other information required by Form 1098-T and its instructions.

(ii) Requirement to include name, address, and TIN of any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return. [Reserved]

(3) Time and place for filing return--(i) In general. Except as provided in paragraphs (b)(3)(ii) and (iii) 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 of qualified tuition or related expenses were

received, or reimbursements or refunds of such amounts were made. An institution or insurer must file Form 1098-T with the IRS according to the instructions to Form 1098-T.

(ii) Return for nonresident alien individual. In general, an institution or insurer is not required to file a return on behalf of a nonresident alien individual. However, if a nonresident alien individual requests an institution or insurer to report, the institution or insurer must file a return described in paragraph (b)(2) of this section with the IRS on or before the date prescribed in paragraph (b)(3)(i) of this section, or on or before the thirtieth day after the request, whichever is later.

(iii) Extensions of time. The IRS may grant an institution or insurer an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098-T and applicable revenue procedures for rules relating to extensions of time to file.

(4) Use of magnetic media. See section 6011(e) and §301.6011-2 of this chapter for rules relating to the requirement to file Forms 1098-T on magnetic media.

(c) Requirement to furnish statement--(1) In general. An institution or insurer must furnish a statement to each individual for whom it is required to file a Form 1098-T. The statement must include--

(i) The information required under paragraph (b)(2) of this section;

(ii) A legend that identifies the statement as important tax

information that is being furnished to the IRS;

(iii) Instructions that--

(A) State that the taxpayer may not be able to claim an education tax credit under section 25A and the regulations thereunder with respect to the total payments of qualified tuition and related expenses reported for the calendar year;

(B) State that the amount of any scholarships, grants, refunds, or reimbursements reported for the calendar year and other similar amounts not reported (because they are not processed by the institution) may reduce the amount of any allowable education tax credit for the taxable year or a prior taxable year;

(C) State that the taxpayer should refer to relevant IRS forms and publications for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(D) Include the name, address, and phone number of the individual who is the information contact for the institution or insurer that filed the Form 1098-T.

(2) Statement furnished to any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return. [Reserved]

(3) Time and manner for furnishing statement--(i) In general. Except as provided in paragraphs (c)(3)(ii) and (iii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual with respect to whom payments of qualified tuition and related

expenses were received, or reimbursements or refunds were made, on or before January 31 of the year following the calendar year in which payments were received or reimbursements or refunds 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.

(ii) Statement to nonresident alien individual. If an information return is filed for a nonresident alien individual, the institution or insurer must furnish a statement described in paragraph (c)(1) of this section to the individual in the manner and on or before the date prescribed in paragraph (c)(3)(i) of this section, or on or before the thirtieth day after the nonresident alien's request to report, whichever is later.

(iii) Extensions of time. The IRS may grant an institution or insurer an extension of time to furnish the statements required in this section upon a showing of good cause. See the instructions to Form 1098-T and applicable revenue procedures for rules relating to extensions of time to furnish statements.

(4) Time and manner for furnishing statement to any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return. [Reserved]

(5) Copy of Form 1098-T. An institution or insurer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1098-T and its instructions or another document that contains all of the information filed with the IRS and the

information required by paragraph (c)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements.

(d) Special rules--(1) Payments received for qualified tuition and related expenses determined--(i) In general. In determining the aggregate amount of payments of qualified tuition and related expenses that an institution must report, 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) will be treated as payments of qualified tuition and related expenses up to the total amount billed by the institution for such expenses.

(ii) Example. The following example illustrates the rules of this paragraph (d)(1):

Example. (i) During the 2002 Spring semester, Student C attends College X and enrolls in a program leading toward an associate's degree. Student C lives on-campus. In December 2001, College X charges Student C \$2,000 for room and board for the 2002 Spring semester. In addition, in December 2001, College X charges Student C \$4,000 for qualified tuition and related expenses for the 2002 Spring semester. In December 2001, Student C pays College X \$1,500. In early January 2002, College X receives and processes a \$4,500 scholarship that may be applied to any of Student C's costs of attendance. Assume that there are no other payments during the calendar years 2001 and 2002.

(ii) Under this paragraph (d)(1), for the calendar year 2001, College X must report \$1,500 for payments of qualified tuition and related expenses received during the calendar year 2001. In addition, for the calendar year 2002, College X must report:

(A) \$2,500 for payments of qualified tuition and related expenses received during the calendar year 2002 (\$4,000 total charges for qualified tuition and related expenses less the \$1,500 payments received during 2001); and

(B) \$4,500 of scholarships processed during the calendar year 2002.

(2) Payments of qualified tuition and related expenses received or collected on behalf of an institution--(i) In general. If an institution contracts with another person to receive or collect payments of qualified tuition and related expenses on its behalf, the other person must satisfy the information reporting requirements of this section.

(ii) Exception. If the institution does not provide the other person with the information necessary to comply with the reporting requirements of this section, the other person must request the information necessary to comply with the information reporting requirements from the institution. If the institution does not provide the other person with the necessary information upon request, the institution must satisfy the information reporting requirements of this section.

(3) Governmental units. An institution or insurer that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the information reporting requirements of this section and an appropriately designated officer or employee of the governmental entity must satisfy the information reporting requirements of this section.

(e) Penalty provisions--(1) Failure to file correct returns. The section 6721 penalty may apply to an institution or insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that

includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) Failure to furnish correct information statements. The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) Waiver of penalties for failures to include a correct TIN--(i) In general. In the case of a failure to include a correct TIN on Form 1098-T or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) Acting in a responsible manner. An institution or insurer must request the TIN of each individual with respect to

whom payments of qualified tuition were received, or reimbursements or refunds were made, 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 (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments of, or makes reimbursements of, qualified tuition and related expenses 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 (e)(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 (e)(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.

(iii) Manner of soliciting TIN. An institution or insurer must request the individual's TIN 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 or insurer. An institution or insurer must notify the individual that the individual's failure to furnish his or her TIN to the institution or insurer may result in a \$50 penalty being imposed against the individual as authorized by law. A request for a TIN made on Form W-9S, "Request for Student's or Borrower's Social Security Number and Certification," satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W-9S electronically as described in applicable forms and instructions. An institution or insurer may also develop a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as financial aid applications.

(4) Requirement to request and obtain TIN of any taxpayer who will claim the individual as a dependent on the taxpayer's Federal income tax return. [Reserved]

(5) Failure to furnish TIN. The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) Effective date. The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2001.

§1.6050S-2 Information reporting for payments of interest on qualified education loans.

(a) Information reporting requirement--(1) In general.

Except as otherwise provided in this section, any person engaged in a trade or business that, in the course of that trade or business, receives from any payor (as defined in paragraph (b)(2) of this section) interest payments that aggregate \$600 or more for any calendar year on one or more qualified education loans (as defined in section 221(e)(1) and §1.221-1(f)(3))(a payee) must--

(i) File an information return, as described in paragraph (c) of this section, with the IRS with respect to the payor; and

(ii) Furnish a statement, as described in paragraph (d) of this section, to the payor.

(2) Reporting period--(i) In general. The information reporting requirements of this section apply only to interest payments received on a qualified education loan during the first 60 months in which interest payments are required on the loan.

(ii) Calculation of 60-month period. In general, the 60-month period described in paragraph (a)(2)(i) of this section begins on the date the qualified education loan first enters repayment status and ends 60 months later. However, if the payee knows, or has reason to know, of any periods of deferment or forbearance during which the 60-month period is suspended under the rules described in §1.221-1(e)(3), the 60-month period described in paragraph (a)(2)(i) of this section is extended by the period of such deferment or forbearance. The date on which

the qualified education loan first enters repayment status is determined under the terms of the loan agreement or, in the case of a loan issued or guaranteed under a federal post-secondary education loan program, under applicable federal regulations. For purposes of reporting under section 6050S and this section for refinanced loans and consolidated and collapsed loans, the rules of §1.221-1(h)(1), relating to the date on which the 60-month period begins, apply.

(iii) Transitional rules for reporting on loans made before January 1, 1998. For qualified education loans made before January 1, 1998, the 60-month period described in paragraph (a)(2)(i) of this section is determined in accordance with the rules of paragraph (a)(2)(ii) of this section, except that if the payee does not know, and does not have reason to know, the date on which the loan entered repayment status, then, for reporting purposes only, the 60-month period begins on January 1, 1998. For defaulted loans made before January 1, 1998, if the payee does not know, and does not have reason to know, the date on which the loan entered repayment status, then, for reporting purposes only, the 60-month period begins on the earlier of the date the loan went into default or January 1, 1998. If the payee does not know, and does not have reason to know, either the date the loan entered repayment status or the default date, then, for reporting purposes only, the 60-month period begins on January 1, 1998. For purposes of this paragraph (a)(2)(iii), a defaulted loan is a loan with respect to which required payments of interest and principal have

not been made when due over a period of time such that the holder has declared the loan in default based on its terms and conditions, and, if applicable, has sought recourse against the ultimate guarantor of the loan.

(b) Definitions. The following definitions apply for purposes of this section:

(1) Interest includes stated interest, loan origination fees (other than fees for services), and capitalized interest as described in §1.221-1(h)(2). See paragraph (e)(1) of this section for a special transitional rule relating to reporting of loan origination fees and capitalized interest.

(2) Payor means the individual who is carried on the books and records of the payee as the borrower on a qualified education loan. If there are multiple borrowers, the principal borrower on the payee's books and records is treated as the payor for purposes of section 6050S and this section.

(c) Requirement to file return--(1) Form of return. A payee must file an information return for the payor on Form 1098-E, "Student Loan Interest Statement." A payee may use a substitute for Form 1098-E if the substitute form complies with the applicable revenue procedures relating to substitute forms.

(2) Information included on return. A payee must include on Form 1098-E--

(i) The name, address, and taxpayer identification number (TIN)(as defined in section 7701(a)(41)) of the payee;

(ii) The name, address, and TIN of the payor;

(iii) The aggregate amount of interest payments received during the calendar year from the payor; and

(iv) Any other information required by Form 1098-E and its instructions.

(3) Time and place for filing return--(i) In general. Except as provided in paragraph (c)(3)(ii) of this section, the Form 1098-E must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which interest payments were received. A payee must file Form 1098-E with the IRS according to the instructions to Form 1098-E.

(ii) Extensions of time. The IRS may grant a payee an extension of time to file returns required in this section upon a showing of good cause. See the instructions to Form 1098-E and applicable revenue procedures for rules relating to extensions of time to file.

(4) Use of magnetic media. See section 6011(e) and §301.6011-2 of this chapter for rules relating to the requirement to file Forms 1098-E on magnetic media.

(d) Requirement to furnish statement--(1) In general. A payee must furnish a statement to each payor for whom it is required to file a Form 1098-E. The statement must include--

(i) The information required under paragraph (c)(2) of this section;

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS;

(iii) Instructions that--

(A) State that, under section 221 and the regulations thereunder, the payor may not be able to deduct the full amount of interest reported on the statement;

(B) State that interest payments are deductible only during the first 60 months that interest payments are required;

(C) In the case of qualified education loans made before January 1, 2002, for which the payee does not report payments of interest other than stated interest, state that the payor may be able to deduct additional amounts (such as certain loan origination fees and capitalized interest) not reported on the statement;

(D) State that the payor should refer to relevant IRS forms and publications for explanations relating to the eligibility requirements for, and calculation of, any allowable deduction for interest paid on a qualified education loan; and

(E) Include the name, address, and phone number of the individual who is the information contact for the payee that filed the Form 1098-E.

(2) Time and manner for furnishing statement--(i) In general. Except as provided in paragraph (d)(2)(ii) of this section, a payee must furnish the statement described in paragraph (d)(1) of this section to the payor on or before January 31 of the year following the calendar year in which payments of interest on a qualified education loan were received. If mailed, the statement must be sent to the payor's last known address.

(ii) Extensions of time. The IRS may grant a payee an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 1098-E and applicable revenue procedures for rules relating to extensions of time to furnish statements.

(3) Copy of Form 1098-E. A payee may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 1098-E and its instructions or another document that contains all the information filed with the IRS and the information required by paragraph (d)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements.

(e) Special rules--(1) Transitional rule for reporting of loan origination fees and capitalized interest. For qualified education loans made before January 1, 2002, a payee is not required to report payments of loan origination fees and capitalized interest as interest under section 6050S and this section.

(2) Qualified education loan certification. If a loan is not subsidized, guaranteed, financed, or is not otherwise treated as a student loan under a program of the Federal, state, or local government or an eligible educational institution, a payee must request a certification from the payor that the loan will be used solely to pay for qualified higher education expenses. A payee may use Form W-9S, "Request for Student's or Borrower's Social Security Number and Certification," to obtain the certification. A payee may establish an electronic system for payors to submit

Forms W-9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to obtain the payor certification or may incorporate certification into other forms customarily used by the payee, such as loan applications, provided the certification is clearly set forth. If the certification is not received, the loan is not a qualified education loan for purposes of section 6050S and this section.

(3) Payments of interest received or collected by one or more persons--(i) In general. If a payee contracts with another person to receive or collect payments on a qualified education loan on its behalf, the other person must satisfy the information reporting requirements of this section.

(ii) Exception. If the payee does not provide the other person with information necessary to comply with the information reporting requirements of this section, the other person must request the information necessary to comply with the information reporting requirements from the payee. If the payee does not provide the other person with the necessary information upon request, the payee must satisfy the information reporting requirements of this section.

(4) Reporting by foreign persons. A payee that is not a United States person (as defined in section 7701(a)(30)) must report payments of interest it receives on a qualified education loan only if it receives the payment--

(i) At a location in the United States; or

(ii) At a location outside the United States if the payee is-

(A) A controlled foreign corporation (within the meaning of section 957(a)); or

(B) A person 50 percent or more of the gross income of which, from all sources for the three-year period ending with the close of the taxable year preceding the taxable year in which interest payments were received (or for such part of the period as the person was in existence), was effectively connected with the conduct of a trade or business within the United States.

(5) Governmental units. A governmental unit, or an agency or instrumentality of a governmental unit, that receives from any payor interest payments that aggregate \$600 or more for any calendar year on one or more qualified education loans is a payee, without regard to the requirement of paragraph (a)(1) of this section that the interest be received in the course of a trade or business.

(f) Penalty provisions--(1) Failure to file correct returns. The section 6721 penalty may apply to a payee that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) Failure to furnish correct information statements. The section 6722 penalty may apply to a payee that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) Waiver of penalties for failures to include a correct TIN--(i) In general. In the case of a failure to include a correct TIN on Form 1098-E or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the payee's control, such as a failure of the payor to furnish a correct TIN. However, the payee must establish that it acted in a responsible manner both before and after the failure.

(ii) Acting in a responsible manner. A payee must request the TIN of each payor if it does not already have a record of the payor's correct TIN. If the payee does not have a record of the payor'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 interest. If a payor refuses to provide his or her TIN upon

request, the payee must file the return and furnish the statement required by this section without the payor'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 a payee acted in a responsible manner in attempting to obtain a correct TIN. A payee 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 a payor on a return or statement required by section 6050S and this section.

(iii) Manner of soliciting TIN. A payee must request the payor's TIN in writing and must clearly notify the payor that the law requires the payor to furnish a TIN so that it may be included on an information return filed by the payee. A payee must notify the payor that the payor's failure to furnish his or her TIN to the payee may result in a \$50 penalty being imposed against the individual as authorized by law. A request for a TIN made on Form W-9S, "Request for Student's or Borrower's Social Security Number and Certification," satisfies the requirements of this paragraph (f)(3)(iii). A payee may establish a system for payors to submit Forms W-9S electronically as described in applicable forms and instructions. A payee may also develop a separate form to request the payor's TIN or incorporate the request into other forms customarily used by the payee, such as loan applications.

(4) Failure to furnish TIN. The section 6723 penalty may apply to any payor who is required (but fails) to furnish his or her TIN to a payee. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(g) Effective date. The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2001.

PART 301--PROCEDURE AND ADMINISTRATION

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

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

Par. 4. Section 301.6011-2 is amended by:

1. Revising the first sentence of paragraph (b)(1).
2. Revising paragraph (g)(1).
3. Adding paragraph (g)(3).

The revisions and additions read as follows:

§301.6011-2 Required use of magnetic media.

* * * * *

(b) Returns required on magnetic media. (1) If the use of Form 1042-S, 1098 series, 1099 series, 5498, 8027, W-2G, or other form treated as a form specified in this paragraph (b)(1) is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted on magnetic media, except as otherwise provided in paragraph (c) of this section. * * *

* * * * *

(g) Effective dates. (1) Except as otherwise provided in paragraph (g)(2) or (g)(3) of this section, this section applies to returns required to be filed after December 31, 1986.

* * * * *

(3) This section applies to returns on Forms 1098-T and 1098-E required to be filed after December 31, 2001.

Robert E. Wenzel
Deputy Commissioner of Internal Revenue