

EFFECTIVE DATE: These regulations are effective December 29, 1993.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1339. The collection of information requirement in these regulations is satisfied by including the additional information on a Form 1098 filed with the Service and on a statement furnished to the payor of record (a substitute Form 1098). The estimated burden for filing Form 1098 and the statement to the payor of record (substitute Form 1098) is reflected in the burden estimates for Form 1098.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224, and 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.

Background

This document provides final regulations amending the Income Tax Regulations (26 CFR part 1) under section 6050H of the Internal Revenue Code of 1986 (Code). On October 16, 1992, the IRS published in the Federal Register a Notice of Proposed Rulemaking (57 FR 47428) relating to the information reporting requirements for reimbursements of interest paid on qualified mortgages. Before adopting the final regulations, the IRS solicited comments and held a public hearing on the proposed regulations. The IRS received eighteen written comments. In addition, three persons provided oral comments at the public hearing held on November 30, 1992. The amendments to the regulations contained in this document are adopted after consideration of the written comments and the testimony at the public hearing.

Comments on Proposed Regulations

A. Effective Date

Under section 6050H, interest recipients must (1) file an information return (Form 1098) with the IRS, and (2) furnish a statement to the payor of record on the mortgage. Under the proposed regulations, Forms 1098 filed with the IRS after December 31, 1993, were required to include the

information relating to the reimbursement of mortgage interest. However, mortgage interest reimbursements were to be reported on statements required to be furnished to payors of record after December 31, 1992 (i.e., for statements relating to 1992 reimbursements).

Commentators argued that compliance with this effective date would be unduly burdensome and, in some cases, impossible. The commentators noted that the data processing systems of the interest recipients had not been programmed to identify reimbursements of interest made in 1992 and, thus, compliance with the regulations would require a very costly manual search of records and preparation of statements. Commentators requested that the effective date for statements furnished to payors of record be after December 31, 1993, consistent with the effective date for Forms 1098 filed with the IRS.

The final regulations, therefore, provide that reimbursements of interest on a qualified mortgage made in 1993 and subsequent calendar years must be reported on both Forms 1098 filed with the IRS and statements furnished to payors of record. This change was first announced in Notice 92-60, 1992-2 C.B. 387. In addition, for reimbursements made in 1993, no penalties will be imposed under sections 6721 through 6724 for failure to comply with the reporting requirements of these regulations. Reimbursements made prior to 1993 are not required to be reported.

B. Information Reported to Payors of Record

The proposed regulations provided that, on the statement furnished to payors of record under § 1.6050H-2(b), the year or years in which the interest overpayments were made and the portion of the reimbursement attributable to each year must be reported. Commentators recommended that this requirement not be included in the final regulations. The commentators argued that compliance would impose data processing difficulties. Further, the commentators noted that reporting the year or years of overpayment is important to only a small minority of payors of record—those that deducted all of their mortgage interest in some years but not in other years. Because the information is relevant to only a small number of payors of record, the commentators argued that it should not be required to be reported. Rather, if a payor of record needs to know the year(s) of overpayment, the payor of

26 CFR Parts 1 and 602

[TD 8507]

RIN 1545-AQ78

Information Reporting for Reimbursements of Interest on Qualified Mortgages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6050H of the Internal Revenue Code relating to the information reporting requirements for reimbursements of interest paid in connection with a qualified mortgage. This information is required by the Internal Revenue Service to encourage compliance with the tax laws relating to the deductibility of payments of mortgage interest. The information will be used to determine whether mortgage interest reimbursements have been correctly reported on the return of the taxpayer who receives the reimbursement.

record can contact the interest recipient directly to obtain the information.

Therefore, the requirement in the proposed regulations that interest recipients report to the payor of record the year or years in which the interest overpayments were made and the portion of the reimbursement attributable to each year has been excluded from the final regulations. Under the final regulations, with respect to mortgage interest reimbursements, the reimbursement amount reported on Form 1098 to the Internal Revenue is the only amount required to be reported on statements furnished to payors of record. This change was first announced in Notice 92-60.

C. Information Reporting Threshold

The proposed regulations required any reimbursement of prior year overpayments of interest to be reported if the reimbursement relates to an amount of interest required to be reported on a Form 1098 in such prior year. Commentators stated that the regulations should provide a de minimis rule relating to the amount of reimbursement that must be reported. Some commentators recommended a \$600 threshold for the reporting of reimbursements, consistent with the threshold for reporting mortgage interest received.

In response to those comments, the final regulations provide that, with respect to reimbursements of interest on a qualified mortgage in a calendar year, (a) reimbursements aggregating \$600 or more must be reported, and (b) reimbursements aggregating less than \$600 must be reported only in instances where \$600 or more of interest on the qualified mortgage is received in the calendar year of the reimbursement from the payor of record. Thus, under the regulations, reimbursements aggregating \$600 or more in a calendar year must be reported. However, reimbursements aggregating less than \$600 must be reported only if a Form 1098 is otherwise required to be filed for the payor of record that received the reimbursement because at least \$600 of mortgage interest is received in the calendar year from the payor of record.

D. Reporting Reimbursements on Form 1098

Some commentators contended that reimbursements of interest on a qualified mortgage are reportable under section 6041 of the Code and thus should be reported on Form 1099-MISC. The proposed regulations make clear that the reimbursements are reportable under section 6050H on Form 1098.

The final regulations maintain the position prescribed in the proposed regulations that reimbursements of interest on a qualified mortgage must be reported on Form 1098. The Internal Revenue explored the possibility of requiring the reporting of mortgage interest reimbursements on Form 1099-MISC under section 6041. It was decided, however, that section 6050H was the more appropriate reporting section because the reporting of reimbursements of mortgage interest clearly comes within section 6050H(b)(2)(D), which allows the Secretary to require other information to be reported under section 6050H in addition to the name and address of the taxpayer and the amount of mortgage interest received during the calendar year. A reimbursement of mortgage interest relates to an amount that in all likelihood was previously deducted by the borrower. The inclusion of the reimbursed amount in gross income effectively reverses part of the mortgage interest previously deducted. Thus, the requirement to report the interest reimbursement under section 6050H is in keeping with the statutory intent of that section, which is to encourage compliance with the tax laws relating to the deduction for mortgage interest. See H.R. Rep. No. 432, 98th Cong., 2d Sess. 1353 (1984). Finally, the Internal Revenue wishes to clarify that reimbursements of mortgage interest are not subject to Form 1099 reporting under section 6041.

E. Reporting of Interest on Reimbursements

Commentators requested more guidance on the reporting of interest paid with respect to reimbursed amounts (i.e., the amount paid to the borrower, in addition to the refund of an overpayment, that constitutes interest for the use of the borrower's funds). The proposed regulations provide only that Form 1098 and the statement furnished to the payor of record must not include any amount that constitutes interest on the reimbursement paid to the payor of record.

The final regulations provide that, in the case of a person carrying on the banking business (or a middleman, as defined in § 1.6049-4(f)(4), of a person carrying on the banking business), rules relating to the reporting of interest on a reimbursement of mortgage interest are provided in section 6049 and the regulations thereunder. Persons subject to section 6049 must report payments of interest aggregating \$10 or more to a payor of record during the calendar year.

The final regulations also provide that, for persons not subject to section 6049 reporting for the payment of interest on a reimbursement of mortgage interest, rules relating to the reporting of such interest payments are provided in section 6041 and the regulations thereunder. Because section 6041 provides a \$600 threshold amount, persons not subject to section 6049 reporting for the payment of interest on a reimbursement of mortgage interest would be required to report only those payments of interest aggregating \$600 or more to a payor of record.

F. Other Comments

The IRS received a number of comments in addition to those summarized above. Some of the suggestions contained in the comments have been adopted in the final regulations. Other suggested changes were not adopted primarily because those suggestions were inconsistent with the purpose of the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Stephen J. Toomey of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 * * *. Section 1.6050H-2 is also issued under 26 U.S.C. 6050H. * * *

Par. 2. Section 1.6050H-2 is amended as follows:

1. The word "and" at the end of paragraph (a)(2)(iii) is removed.
2. Paragraph (a)(2)(iv) is redesignated as paragraph (a)(2)(v).
3. A new paragraph (a)(2)(iv) is added.
4. Paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(4) and (a)(5), respectively, and a new paragraph (a)(3) is added.
5. Newly designated paragraph (a)(4) is revised.
6. Paragraph (b)(2)(ii) is revised.
7. At the end of paragraph (b)(2)(iii), "" is removed and "; and" is added in its place.
8. Paragraph (b)(2)(iv) is added.
9. Paragraph (b)(6) is revised.
10. The added and revised provisions read as follows:

§ 1.6050H-2 Time, form, and manner of reporting interest received on qualified mortgage.

- (a) * * *
- (2) * * *

(iv) With respect to reimbursements of interest on a qualified mortgage (as discussed in paragraph (a)(3) of this section) made to the payor of record in the calendar year—

- (A) Reimbursements aggregating \$600 or more; and
- (B) Reimbursements aggregating less than \$600, but only if \$600 or more of interest on the qualified mortgage is received in the calendar year from the payor of record; and

(3) *Reimbursements of interest on a qualified mortgage.* For purposes of paragraph (a)(2)(iv) of this section, a reimbursement of interest on a qualified mortgage is a reimbursement of an amount received in a prior year that was required to be reported for that prior year under paragraph (a)(2)(iii) of this section by any interest recipient. Only the interest recipient that makes the reimbursement is required to report the reimbursement under this section. Form 1098 and the statement furnished to the payor of record under paragraph (b) of this section must not include any amount that constitutes interest on the reimbursement paid to the payor of record. Rules relating to the requirement to report interest on a reimbursement are, in the case of a person carrying on the banking business (or a middleman,

as defined in § 1.6049-4(f)(4), of a person carrying on the banking business), provided in section 6049 and the regulations thereunder, and, for other persons, provided in section 6041 and the regulations thereunder.

Reimbursements of interest on a qualified mortgage (as described in this section) made in 1993 and subsequent calendar years must be reported on Form 1098 and statements furnished to payors of record. Reimbursements made prior to 1993 are not required to be reported.

(4) *Time and place for filing return.* An interest recipient must file a return required by paragraph (a) of this section on or before February 28 of the year following the calendar year for which it receives the mortgage interest. If no interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then a return required by paragraph (a) of this section must be filed on or before February 28 of the year following the calendar year in which the reimbursement was made. An interest recipient must file the return required by paragraph (a) of this section with the IRS office designated in the instructions for Form 1098.

- (b) * * *
- (2) * * *

(ii) A legend that—

(A) Identifies the statement as important tax information that is being furnished to the IRS; and

(B) Notifies the payor of record that if the payor of record is required to file a return, a negligence penalty or other sanction may be imposed on the payor of record if the IRS determines that an underpayment of tax results because the payor of record overstated a deduction for this mortgage interest (if any) or understated income from this mortgage interest reimbursement (if any) on the payor of record's return;

(iv) With respect to any information required to be reported under paragraph (a)(2)(iv) of this section, an instruction providing that the amount of the reimbursement is not to be deducted and that the amount must be included in the gross income of the payor of record if the reimbursed interest was deducted by the payor of record in a prior year so as to reduce income tax.

(6) *Time and place for furnishing statement.* An interest recipient must furnish a statement required by paragraph (b)(1) of this section to a payor of record on or before January 31

of the year following the calendar year for which it receives the mortgage interest. If no mortgage interest is required to be reported for the calendar year, but a reimbursement of interest on a qualified mortgage is required to be reported for the calendar year, then the statement required by paragraph (b)(1) of this section must be furnished on or before January 31 of the year following the calendar year in which the reimbursement was made. The interest recipient will be considered to have furnished the statement to the payor of record if it mails the statement to the payor of record's last known address.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par 5. In § 602.101(c), the table is amended by revising the entry for § 1.6050H-2 to read: "1.6050H-2 * * * 1545-0901, 1545-1339".

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: December 16, 1993.

Samuel Y. Sessions,
Acting Assistant Secretary of the Treasury.
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