

§ 1.6050H-1T

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(6) *Effect on deduction of points.* This section and § 1.6050H-2 address only the information reporting requirements of section 6050H and do not affect a payor of record's deduction for any amount in accordance with applicable provisions of the Internal Revenue Code.

(g) *Effective date—(1) In general.* Except as provided in paragraph (g)(2) of this section, this section is effective for mortgage interest received after December 31, 1987. Section 1.6050H-1T contains rules for reporting mortgage interest received after December 31, 1984, and before January 1, 1988.

(2) *Points.* The reporting requirements of this section do not apply to prepaid interest received in the form of points before January 1, 1995. In addition, the inclusion of points in the determination of interest under paragraph (e)(1) of this section applies only to transactions occurring after December 31, 1994.

[T.D. 8191, 53 FR 12002, Apr. 12, 1988, as amended by T.D. 8571, 59 FR 63251, Dec. 8, 1994; T.D. 8734, 62 FR 53492, Oct. 14, 1997]

§ 1.6050H-1T Information reporting of mortgage interest received in a trade or business from individuals after 1985 and before 1988 (temporary).

The following questions and answers relate to the requirement of reporting mortgage interest under section 6050H of the Internal Revenue Code of 1954, as added by section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685):

REQUIREMENT OF REPORTING

In general

Q-1: What does section 6050H provide with respect to the reporting of mortgage interest?

A-1: In general, section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, in the course of such trade or business, receives from any individual \$600 or more of interest on any mortgage in a calendar year. For purposes of this section—

(a) Any person who is engaged in a trade or business and who, in the course of such trade or business, receives interest on any mortgage is referred to as an "interest recipient"; and

(b) Any individual who pays interest on any mortgage is referred to as a "payor".

Interest Subject To Reporting

Q-2: Does the reporting requirement apply to all interest received by an interest recipient?

A-2: No. The reporting requirement applies only to interest received from a payor on a mortgage (as defined in A-4 and A-5 of this section). The reporting requirement does not apply to interest received from a trust, estate, partnership, association, company, or corporation.

Q-3: Does the reporting requirement apply to any amount of mortgage interest received from a payor?

A-3: No. The reporting requirement applies only if \$600 or more of interest is received from a payor on any mortgage in a calendar year. The \$600 threshold is determined on an obligation by obligation basis. Therefore, if the interest received from a payor on an obligation is less than \$600, reporting with respect to that interest is not required even if the total interest received from the payor on all obligations held by the interest recipient exceeds \$600 in a calendar year.

Q-4: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations in existence on December 31, 1984?

A-4: An obligation in existence on December 31, 1984, that is secured primarily by real property (regardless of whether the property is located inside or outside the United States) is a mortgage unless, at the time the obligation was incurred, the interest recipient reasonably classified such obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. (See A-12 of this section for rules relating to interest received by foreign persons.) For example, if an obligation incurred in 1980 was secured primarily by real property, but the interest recipient reasonably classified the obligation as a commercial loan because the proceeds were used to finance the payor's trade or business, the obligation is not considered a mortgage for purposes of this section and section 6050H. If, however, a majority of the obligations in a particular class are primarily secured by real property, it is not reasonable to classify such obligations as other than mortgages, real property loans, real estate loans, or other similar types of obligations; such obligations are, therefore, mortgages for purposes of section 6050H and this section. For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property.

Q-5: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations incurred after December 31, 1984?

A-5: With respect to obligations incurred after December 31, 1984, a mortgage is any obligation that is secured primarily by real property, regardless of whether the property is located inside or outside the United States. (See A-12 of this section for rules relating to interest received by foreign persons.) For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property. The determination of whether a particular obligation is a mortgage shall be made without regard to the interest recipient's classification of that obligation. For example, if an obligation is secured primarily by real property, but the interest recipient classifies the obligation as a commercial loan because the proceeds are to be used to finance the payor's trade or business, the obligation is nevertheless a mortgage for purposes of this section and section 6050H.

Q-6: If the amount of interest received on a mortgage in a calendar year is less than the amount of interest due on the mortgage, what amount of interest must be reported under this section?

A-6: The amount of interest received must be reported. For example, assume that \$800 of interest is payable in a calendar year but only \$600 of interest is received in the calendar year. The amount of interest received (\$600) must be reported under this section. Similarly, assume that an interest recipient accrues \$900 of interest on a mortgage in a calendar year but only \$800 of interest is payable and is received in the calendar year (resulting in a \$100 increase in the unpaid balance of the loan). The amount of interest received (\$800) must be reported under this section.

Q-7: If a payor remits 13 payments of interest on any mortgage in a calendar year, but the interest recipient receives only 12 payments in the calendar year, what amount should the interest recipient report?

A-7: The interest recipient should report the interest actually received in the calendar year. For example, if a payor mails the 13th payment on December 31 or a calendar year, and the interest recipient does not receive it until the following calendar year, the interest recipient should report only the 12 payments received in the calendar year.

Trade or Business Requirement

Q-8: Must an interest recipient be engaged in the trade or business of lending money to be subject to the reporting requirement of this section?

A-8: No. An interest recipient (other than a governmental unit, or any agency or instrumentality thereof) is subject to this reporting requirement if the interest recipient is engaged in any trade or business and, in

the course of such trade or business, receives from an individual \$600 or more of interest on any mortgage in a calendar year. For example, if A, a real estate developer, provides financing to B, an individual, to enable B to purchase a house in a subdivision owned and developed by A, and that house is the primary security for the financing, A is subject to this reporting requirement. Alternatively, if C, a physician, who is not engaged in any other trade or business, lends money to D to enable D to purchase C's home, C is not subject to the reporting requirement of this section because C will not receive the interest in the course of his sole trade or business of being a physician.

Q-9: How does the trade or business requirement apply to a governmental unit?

A-9: A governmental unit (or any agency or instrumentality thereof) which receives from a payor \$600 or more of interest on any mortgage in a calendar year is subject to the reporting requirement without regard to the requirement that the money be received in the course of a trade or business. A governmental unit (or any agency or instrumentality thereof) that is subject to the reporting requirement must designate an officer or employee to make the return. The designated officer or employee must make the return in the form and manner prescribed by this section.

Treatment of Cooperative Housing Corporations

Q-10: How does this reporting requirement apply in the case of cooperative housing corporation?

A-10: For purposes of section 6050H and this section, a cooperative housing corporation (as defined in section 216) is treated as a person who is engaged in a trade or business and who, in the course of such trade or business, receives interest from its tenant-stockholders on a mortgage. Therefore, a cooperative housing corporation is required to report under section 6050H and this section.

Interest Received on Behalf of Another

Q-11: If, in the course of a trade or business, a person receives (collects) interest on behalf of another, who is required to report?

A-11: The person first receiving (collecting) the interest is required to report. For example, a servicing bank that receives \$600 or more of mortgage interest in a calendar year from a payor on behalf of a lender is required to report the interest received under this section. No reporting is required under this section upon the transfer of the interest from the servicing bank to the lender for whom the interest was received.

Interest Received by Foreign Persons

Q-12: Must an interest recipient that is a foreign person report under section 6050H and this section?

A-12: An interest recipient that is a foreign person must report with respect to mortgage interest that is received at a location within the United States. In the case of interest received at locations outside the United States, an interest recipient that is a foreign person must report—

(a) If the foreign person is a controlled foreign corporation within the meaning of section 957(a); or

(b) If the foreign person is a corporation any interest received from which would be considered to be from sources within the United States under section 861(a)(1)(C) (without regard to whether the interest is paid or credited by a domestic branch of a foreign corporation engaged in the commercial banking business).

Multiple Borrowers

Q-13: When there is more than one borrower on a mortgage, must the interest recipient report with respect to each borrower?

A-13: No. The interest recipient must report only with respect to the payor of record (as defined in A-14 of this section) on the mortgage. The amount of interest subject to reporting is the full amount received by the interest recipient with respect to the mortgage during the calendar year.

Q-14: Who is a payor of record?

A-14: For purposes of this section, the payor of record is the individual carried on the books and records of the interest recipient as the principal borrower or the individual designated by the interest recipient as the payor of record.

Interest Paid by Third Parties

Q-15: If an interest recipient receives interest on a mortgage from a person other than the borrower, must the interest recipient report this amount as received from the borrower?

A-15: In general, yes. Except as otherwise provided in this A-15 and A-15a of this section, an interest recipient must report all amounts received on a borrower's mortgage as received from the borrower under section 6050H and this section. For example, assume that N is the borrower on a mortgage and that interest is received on the mortgage from N's mother. The interest that is received from N's mother on N's mortgage is reportable under section 6050H and this section as received from N. However, interest that is paid by a seller on a purchaser's mortgage shall not be reported under section 6050H and this section as received from the purchaser. For example, if a real estate developer deposits an amount in escrow with the interest recipient and advises the interest recipient to draw on the account to pay interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. Similarly, if a real estate

developer pays a lump sum to the interest recipient for interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. In addition, amounts received by the interest recipient as housing assistance payments from the Department of Housing and Urban Development ("HUD") on a borrower's mortgage that is insured under section 235 of the National Housing Act (12 U.S.C. 1701-1715z (1982 and Supp. 1983)) shall not be reported as interest received from the borrower. In such a case, therefore, only the amount of interest received on the mortgage that exceeds the amount of housing assistance payments received from HUD shall be reported.

Q-15a: If an interest recipient receives, with respect to a borrower's mortgage, an amount from a governmental unit, or any agency or instrumentality thereof (other than an amount received from HUD as described in A-15 of this section), should the interest recipient report the amount as received from the borrower?

A-15a: If the interest is received after December 31, 1986, it must be reported in the same manner as interest on mortgages with respect to which housing assistance payments are received from HUD, as described in A-15 of this section. If the interest is received before January 1, 1987, it may, but need not, be reported.

FORM AND MANNER OF RETURN

Form of Return

Q-16: What form must be used to make a return required by section 6050H and this section?

A-16: An interest recipient must make the return on Form 1098 (with Form 1096 as the transmittal form). The interest recipient may, however, prepare and use a form that contains provisions substantially similar to those of Forms 1096 and 1098 if that person complies with any revenue procedures relating to substitute Forms 1096 and 1098 in effect at that time. A separate return must be made for each mortgage with respect to which \$600 or more of interest is received for a calendar year.

Information Included on Return

Q-17: What information must an interest recipient include on Form 1098?

A-17: An interest recipient must include the following information on the Form 1098:

(a) The name, address, and TIN (as defined in section 7701(a)) of the payor or payor of record;

(b) The name and address of the interest recipient;

(c) The amount of interest (not including points and other prepaid interest) received on the mortgage in the calendar year; and

(d) Any other information as may be required by Form 1098 or its instructions.

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Time for Filing

Q-18: When must an interest recipient file the return or returns required by section 6050H and this section?

A-18: An interest recipient must file the return or returns on or before February 28 of the year following the calendar year in which the mortgage interest is received.

Place for Filing

Q-19: Where must the return or returns required under section 6050H and this section be filed?

A-19: The return or returns must be filed with the same Internal Revenue Service Center where other returns of the interest recipient are filed.

Use of Magnetic Media

Q-20: What rules apply with respect to the use of magnetic media?

A-20: Any return required under section 6050H and this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so. See §1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

REQUIREMENT OF FURNISHING STATEMENTS TO PAYORS

In General

Q-21: What statements are required to be furnished to payors under section 6050H and this section?

A-21: Any interest recipient required to make an information return under section 6050H must also furnish a statement to the payor or, if applicable, payor of record (see A-13 and A-14 of this section). For the date when the statement must be furnished, see A-26 of this section.

Q-22: Is the statement considered to be furnished to the payor or payor of record if it is mailed to him at his last known address?

A-22: Yes.

Q-23: If an interest recipient furnishes a statement required under a Federal mortgage program will the requirements of A-21 of this section be met?

A-23: Yes, if the statement furnished contains all the information required under A-24 of this section and is furnished to the payors or payors of record by the date required under A-26 of this section.

Information Included on Statement

Q-24: What information must be included on the statement required to be furnished to

payors or payors of record under section 6050H and this section?

A-24: The statement must include the following information:

(a) The information required under A-17 of this section;

(b) A legend stating that the information is being reported to the Internal Revenue Service; and

(c) A legend stating that the amount reported on the statement is deductible by the payor for Federal income tax purposes only to the extent the payor actually paid the amount and was not reimbursed by another person.

Copy of Form 1098 to Payors

Q-25: Can an interest recipient meet the requirement to furnish a statement to a payor or payor of record by furnishing a copy of the Form 1098 filed with respect to that payor or payor of record?

A-25: Yes. The requirement of furnishing a statement may be met by furnishing to the payor or payor of record a copy of the Form 1098 containing the same information filed with the Service with respect to such payor, or a form that contains provisions substantially similar to those of Form 1098, provided that the form bears the legends described in A-24 of this section.

Time for Furnishing Statement

Q-26: When is a statement required to be furnished by an interest recipient to the payor or payor of record?

A-26: A statement is required to be furnished by the interest recipient to the payor or payor of record on or before January 31 of the year following the calendar year in which the mortgage interest is received.

PENALTIES

In General

Q-27: Are there any penalties for failing to comply with the requirements of section 6050H and this section?

A-27: Yes. The penalty for failing to make an information return with respect to a payor or payor of record is provided in section 6652. The penalty for failing to furnish a statement to a payor or payor of record is provided in section 6678.

Q-28: Are there any penalties for failing to furnish a TIN upon request?

A-28: Yes. Any payor or payor of record is subject to a \$50 penalty by the Internal Revenue Service if such payor fails to furnish his TIN upon the request of an interest recipient. For rules relating to the requesting of TINs by interest recipients, see A-30 and A-31 of this section.

Q-29: Is an interest recipient subject to any penalties for failing to furnish the TIN of a payor or payor of record?

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A-29: Yes. In general, the penalties provided under section 6676 will be assessed against interest recipients who fail to furnish to the Internal Revenue Service the TIN of a payor or payor of record. With respect to mortgages in existence on December 31, 1984, however, the interest recipient will not be subject to the section 6676 penalties if the interest recipient followed the rules of A-30 and A-31 of this section for requesting TINs and properly processed the responses.

Requesting TINs

Q-30: What rules apply with respect to the requesting of TINs by interest recipients?

A-30: With respect to obligations incurred after December 31, 1984, the interest recipient must take all reasonable steps to obtain the TIN of the payor or payor of record at the time the obligation is incurred. With respect to any mortgage for which the interest recipient does not have the TIN of the payor or payor of record in its accounting system, the interest recipient must request, at least once a year, the TIN of such payor.

The request for a TIN need not be in a separate mailing. The request may be included, for example, in the interest recipient's regular mailings of payment coupon booklets or annual statements. However, if the interest recipient makes no other mailings to the payor or payor of record during 1985 (or during the year in which the obligation is incurred for obligations incurred after 1985), then the interest recipient must request the TIN in a separate mailing.

Q-31: What form must the interest recipient use to request the TIN of a payor or a payor of record?

A-31: No particular form must be used to request the TIN. However, the request must be made on a separate piece of paper and the request must clearly notify the payor that the Internal Revenue Service requires the payor to furnish his TIN in order to verify any deduction for mortgage interest. The interest recipient must also notify such payor that he is subject to a \$50 penalty, imposed by the Internal Revenue Service, if he fails to furnish his TIN.

Effective Date

Q-32: When is this section effective?

A-32: This section generally is effective for mortgage interest received after December 31, 1984, and before January 1, 1988. However, Q/A-15a of this section is effective for mortgage interest received after December 31, 1986, and before January 1, 1988.

(26 U.S.C. 6050H)

[T.D. 8047, 50 FR 33530, Aug. 20, 1985, as amended by T.D. 8191, 53 FR 12002, Apr. 12, 1988]

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

(a) *Requirement to file return*—(1) *Form of return*. An interest recipient must file a return required by § 1.6050H-1(a) on Form 1098 (with Form 1096 as the transmittal form). An interest recipient may use forms containing provisions substantially similar to those in Forms 1098 and 1096 if it complies with applicable revenue procedures relating to substitute Forms 1098 and 1096. An interest recipient must file a separate return for each qualified mortgage for which it receives \$600 or more of interest for a calendar year.

(2) *Information included on return*. An interest recipient must include on Form 1098:

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

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

(iii) The amount of interest (other than points) required to be reported with respect to the qualified mortgage for the calendar year;

(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;

(v) The amount of points paid directly by the payor of record (within the meaning of § 1.6050H-1(f)(3)) required to be reported with respect to the qualified mortgage for the calendar year; and

(vi) Any other information required by Form 1098 or its instructions.

Section 1.6050H-1(e) contains rules to determine the amount of interest received on a mortgage for a calendar year.

(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