

## § 1.6050H-2

## 26 CFR Ch. I (4-1-04 Edition)

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

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 this paragraph (a) on or before February 28 (March 31 if filed electronically) 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 this paragraph (a) must be filed on or before February 28 (March 31 if filed electronically) 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.

(5) *Use of magnetic media.* An interest recipient must file the return required by paragraph (a) of this section on magnetic media only if required by section 6011(e) and the regulations thereunder. An interest recipient not required by section 6011(e) to file returns on magnetic media may request permission to do so. Section 301.6011-2 con-

tains rules relating to the use of magnetic media. A failure to file on magnetic media when required constitutes a failure to file an information return under section 6721.

(b) *Requirement to furnish statement—*  
(1) *In general.* An interest recipient that must file a return under paragraph (a) of this section must furnish a statement to the payor of record.

(2) *Information included on statement.* An interest recipient must include on the statement that it must furnish to a payor of record:

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

(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;

(iii) A legend stating that the payor of record may be unable to deduct the full amount of mortgage interest reported on the statement; that limitations based on the cost and value of the property securing the mortgage may apply; and that the payor of record may only deduct mortgage interest to the extent it was incurred, actually paid by the payor of record, and not reimbursed by another person; and

(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.

(3) *Statement furnished pursuant to Federal mortgage program.* An interest recipient that furnishes a statement to a payor of record under a Federal mortgage program will satisfy the requirement of paragraph (b)(1) of this section

if the statement contains all the information and legends required by paragraph (b)(2) of this section and is furnished by the time and at the place required by paragraph (b)(6) of this section.

(4) *Copy of Form 1098 to payor of record.* An interest recipient will satisfy the requirement of paragraph (b)(1) of this section by furnishing to a payor of record a copy of Form 1098 (or a substitute statement that complies with applicable revenue procedures) containing all the information filed with the Internal Revenue Service and all the legends required by paragraph (b)(2) of this section by the time and at the place required by paragraph (b)(6) of this section.

(5) *Furnishing statement with other information reports.* An interest recipient may transmit the statement required by paragraph (b)(1) of this section to the payor of record with other information, including other information returns, as permitted by applicable revenue procedures.

(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.

(c) *Notice requirement for use of Rule of 78s method of accounting—(1) In general.* An interest recipient seeking to report interest received on a mortgage under the Rule of 78s method of accounting as permitted under § 1.6050H-1(e)(4) must notify the payor of record that the Rule of 78s method of accounting was used to calculate interest received on the mortgage and that the payor of record may not deduct as interest the

amount calculated under the Rule of 78s method of accounting unless the payor of record properly uses that method to determine interest deductions. The notice must state that the payor of record may use the Rule of 78s method of accounting to determine interest paid for Federal income tax purposes only for a self-amortizing consumer loan requiring level payments at regular intervals (at least annually) over no longer than a five-year period, with no balloon payment at the end of the loan term, and only when the loan agreement provides for use of the Rule of 78s method of accounting to determine interest earned. See Rev. Proc. 83-40, 1983-1 C.B. 774; Rev. Rul. 83-84, 1983-1 C.B. 97.

(2) *Time and manner.* An interest recipient must provide notice required by paragraph (c)(1) of this section to a payor of record on or with the statement required by paragraph (b) of this section. An interest recipient may provide notice on a separate paper or on the statement required by paragraph (b) of this section.

(d) *Reporting under designation agreement—(1) In general.* An interest recipient that receives or collects interest (including points) on a mortgage may designate a qualified person to satisfy the reporting requirements of paragraphs (a), (b), and (c) of this section. If a designated qualified person reports as permitted under this paragraph (d), it will satisfy the requirement of paragraph (a)(2)(ii) of this section by including on Form 1098 (and Form 1096) the name, address, and TIN of the designated qualified person.

(2) *Qualified person.* A qualified person is either—

(i) A trade or business with respect to which the interest recipient is under common control within the meaning of § 1.414(c)-2; or

(ii) A person who is named as the designee by the lender of record or by a qualified person (under paragraph (d)(2) of this section) in a designation agreement entered into in accordance with paragraph (d)(3) of this section, and who either was involved in the original loan transaction or is a subsequent purchaser of the loan.

(3) *Designation agreement.* An interest recipient that designates a qualified

person to satisfy the reporting requirements described in paragraphs (a), (b), and (c) of this section must make that designation in a written designation agreement. The designation agreement must identify the mortgage(s) and calendar years for which the designated qualified person must report, and must be signed by both the designator and designee. A designee may report an amount as having been paid directly by the payor of record (for purposes of paragraph (a)(2)(v) of this section) only if the designation agreement contains the designator's representation that it did not lend such amount to the payor of record as part of the overall transaction. The designator must retain a copy of the designation agreement for four years following the close of the calendar year in which the loan is made. The designation agreement need not be filed with the Internal Revenue Service.

(4) *Penalties.* A designated qualified person is subject to any applicable penalties provided in part II of subchapter B of chapter 68 of the Internal Revenue Code as if it were an interest recipient. A designator is relieved from liability for applicable penalties by designating a qualified person under the provisions of paragraph (d)(3) of this section. Paragraph (e) of this section describes applicable penalties.

(e) *Penalty provisions—(1) Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1987, and before December 31, 1989.* For purposes of this paragraph (e)(1) only, all references to sections of the Internal Revenue Code refer to sections of the Internal Revenue Code of 1986, as amended on or before December 31, 1987.

(i) *Failure to file return or to furnish statement.* The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

(ii) *Failure to furnish TIN.* The section 6676 penalty may apply to an interest recipient that fails to furnish the TIN of a payor of record on a return re-

quired by paragraph (a) of this section. The section 6676 penalty may apply to an interest recipient that fails to request and to obtain the TIN of a payor of record under paragraph (f) of this section.

(iii) *Failure to include correct information.* The section 6723 penalty may apply to an interest recipient that fails to include correct information on a return required by paragraph (a) of this section or on a statement required by paragraph (b) of this section to be furnished to a payor of record.

(2) *Returns and statements the due date for which (determined without regard for extensions) is after December 31, 1989—(i) Failure to file return or to furnish statement.* The section 6721 penalty applies to an interest recipient that fails to file a return required by paragraph (a) of this section with respect to a payor of record. The section 6722 penalty applies to an interest recipient that fails to furnish a statement required by paragraph (b) of this section to a payor of record.

(ii) *Failure to furnish TIN.* The section 6721 penalty may apply to an interest recipient that fails to furnish the TIN of a payor of record on a return required by paragraph (a) of this section. The section 6721 penalty may apply to an interest recipient that fails to request and to obtain the TIN of a payor of record under paragraph (f) of this section.

(iii) *Failure to include correct information.* The section 6721 penalty may apply to an interest recipient that fails to include correct information on a return required by paragraph (a) of this section. The section 6722 penalty may apply to an interest recipient that fails to include correct information on a statement required by paragraph (b) of this section to be furnished to a payor of record.

(f) *Requirement to request and to obtain TIN—(1) In general.* For obligations incurred after December 31, 1987, an interest recipient must make all reasonable efforts to obtain the TIN of a payor of record when the payor of record incurs the obligation. For example, an interest recipient may require a borrower to furnish a TIN during the mortgage approval or application process. If an interest recipient does not

maintain the TIN of a payor of record on a mortgage, whenever incurred, it must request the TIN at least annually and must process responses properly and promptly.

(2) *Manner of requesting TIN.* An interest recipient need not separately mail a request for a TIN. An interest recipient may include a request in its regular mailing of payment coupon booklets or annual statements. If an interest recipient makes no mailing to a payor of record during the year in which the payor of record incurs the obligation, it must request the TIN in a separate mailing. No particular form is required to request a TIN. Nevertheless, an interest recipient must make the request on a separate paper and must clearly notify a payor of record that the Internal Revenue Service requires the payor of record to furnish a TIN in order to verify any mortgage interest deduction. An interest recipient must notify a payor of record that failure to furnish a TIN subjects the payor of record to a \$50 penalty imposed by the Internal Revenue Service. A request for a TIN made on Form W-9 satisfies the requirement of this paragraph (f)(2).

(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 requirement of this section does not apply to prepaid interest in the form of points received before January 1, 1995.

[T.D. 8191, 53 FR 12005, Apr. 12, 1988, as amended by T.D. 8507, 58 FR 68753, Dec. 29, 1993; T.D. 8571, 59 FR 63253, Dec. 8, 1994; T.D. 8895, 65 FR 50408, Aug. 18, 2000]

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This section lists the major captions that appear in §§ 1.6050I-1 and 1.6050I-2.

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