

Part III - Administrative, Procedural, and Miscellaneous

RETURNS RELATING TO INTEREST PAYMENTS ON QUALIFIED EDUCATION LOANS

Notice 2004-63

PURPOSE

This Notice announces that the Internal Revenue Service will not assert penalties under section 6721 (failure to file correct information returns) or section 6722 (failure to furnish correct information statements) of the Internal Revenue Code for the failure to report under section 6050S payments attributable to loan origination fees and capitalized interest received in calendar year 2004 on qualified education loans made on or after September 1, 2004, if a person receiving payments satisfies the requirements set forth below. This Notice also announces that a borrower who receives an information statement indicating that it does not include payments of loan origination fees may use any reasonable method to allocate the loan origination fees over the term of the loan for purposes of the deduction allowable under section 221.

BACKGROUND

Section 6050S requires certain persons (payees) who receive payments of interest on one or more qualified education loans, as defined in section 221(d)(1), to file information returns with the Service and to furnish a corresponding information statement to the individual named on the information return (borrower) showing the information that is reported to the Service. The return and statement are required to include information concerning the aggregate amount of interest received from the individual during the calendar year to assist taxpayers and the Service in determining the amount of qualified education loan interest that taxpayers may deduct under section 221. The specific information reporting requirements applicable to payees for the calendar years 1998 through 2001 are described in Notice 98-7, 1998-1 C.B. 339 (as modified by Notice 98-54, 1998-2 C.B. 643; Notice 99-37, 1999-2 C.B. 124; and Notice 2000-62, 2000-2 C.B. 587).

On April 29, 2002, the Treasury Department and the Service issued final regulations under section 6050S. See 67 Fed. Reg. 20901. The final regulations extended the reporting requirements described in Notice 98-7 (as modified) for calendar year 2002. The final regulations apply to information returns required to be filed, and information statements required to be furnished, for payments received during calendar year 2003 and later years. Section 1.6050S-3(e)(1) of the Income Tax Regulations contained a special transitional rule under which payees were not required to report

payments of loan origination fees or capitalized interest received on qualified education loans made before January 1, 2004.

On May 7, 2004, the Treasury Department and the Service finalized the section 221 regulations and amended section 1.6050S-3(e) by extending the special transitional rule. See 69 Fed. Reg. 25489. Amended section 1.6050S-3(e)(1) provides that payees are not required to report payments of loan origination fees and capitalized interest for qualified education loans made before September 1, 2004. For qualified education loans made on or after September 1, 2004, however, payees are required to report payments of interest (including loan origination fees and capitalized interest) received on qualified education loans on Form 1098-E, "Student Loan Interest Statement."

Payees have advised the Treasury Department and the Service that the period of time between May 7, 2004, the publication date of the section 221 regulations and the amended section 6050S regulations, and September 1, 2004, the date as of which payees must begin to capture information on payments of loan origination fees and capitalized interest, does not provide sufficient lead time for some payees to make the necessary programming changes to comply with the reporting requirements.

PENALTY RELIEF

In light of these comments, the Service will not assert penalties under section 6721 or section 6722 for failure to report payments attributable to loan origination fees and capitalized interest received in calendar year 2004 on a qualified education loan made on or after September 1, 2004, if the payee:

(1) files and furnishes in a timely manner a Form 1098-E (or other appropriate information statement) that (i) includes the amount of interest (except for any loan origination fees or capitalized interest) received in 2004 in box 1, (ii) does not include a check in box 2, and (iii) includes all other required information; and

(2) furnishes a statement to the borrower indicating that the amount of interest reported in box 1 of Form 1098-E for calendar year 2004 does not include payments attributable to either loan origination fees or capitalized interest received on qualified education loans made on or after September 1, 2004, and that the borrower may be able to deduct amounts in addition to the amount reported in box 1.

The penalty relief under this Notice will allow additional time for payees to make the necessary programming changes to enable them to capture information on and report payments of loan origination fees and capitalized interest received in 2005 and future calendar years consistent with the reporting requirements of the amended section 6050S regulations for qualified education loans made on or after September 1, 2004.

Forms 1098-E for calendar year 2004 must be filed with the Service by February 28, 2005, if filed on paper or by magnetic media, or by March 31, 2005, if filed electronically. In addition, payees must furnish information statements to the borrower on or before January 31, 2005.

Notwithstanding sections 1.163-7(a) and 1.1275-2(a), a borrower who receives a Form 1098-E (or other appropriate information statement) indicating that it does not include payments of loan origination fees may use any reasonable method to allocate the loan origination fees over the term of the loan for purposes of the deduction allowable under section 221. A method that results in the double deduction of the same portion of a loan origination fee would not be reasonable.

EFFECTIVE DATE

This Notice is effective as of September 1, 2004.

CONTACT INFORMATION

The principal author of this notice is Tonya L. Christianson of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this notice contact Ms. Christianson at (202) 622-4910 (not a toll-free call).