

Returns Relating to Higher Education Tuition and Related Expenses

Notice 97-73

PURPOSE

This notice describes the information reporting requirements for 1998 under § 6050S of the Internal Revenue Code (as enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 201(c), 111 Stat. 804 (the Act)) that apply to certain educational institutions in connection with the Hope Scholarship Credit and the Lifetime Learning Credit. The Treasury Department intends to issue regulations on the information reporting required under § 6050S. Pending the issuance of those regulations, this notice describes who must report information, and the nature of the information that will be required to be reported under § 6050S for 1998.

BACKGROUND

A. The Hope Scholarship and Lifetime Learning Credits.

Section 201(a) of the Act, 111 Stat. 799, added § 25A to the Code. Section 25A allows certain taxpayers who pay qualified tuition and related expenses to an eligible educational institution to claim a Hope Scholarship Credit or a Lifetime Learning Credit against their federal income tax liability. The Hope Scholarship Credit is available for qualified tuition and related expenses paid after December 31, 1997, in taxable years ending after that date for education furnished in academic periods beginning after December 31, 1997. The Lifetime Learning Credit is available for qualified tuition and related expenses paid after June 30, 1998, in taxable years ending after that date for education furnished in academic periods beginning after June 30, 1998. The term "academic period" includes a semester, trimester, quarter, or any other period designated as a period of instructional time by the educational institution. For this purpose, an academic period begins on the first day of classes, and does not include periods of student orientation, counseling, or vacation.

For a taxpayer to be eligible for the Hope Scholarship Credit or the Lifetime Learning Credit, qualified tuition and re-

lated expenses must be paid by the taxpayer to an eligible educational institution for the taxpayer, the taxpayer's spouse or any dependents. Payments by a taxpayer's dependents are to be treated as having been made by the taxpayer. The Hope Scholarship Credit is available only for the qualified tuition and related expenses of students enrolled at least half-time in the first two years of postsecondary education and can be claimed in no more than two years for each student.

Qualified tuition and related expenses are the tuition and fees an individual is required to pay in order to be enrolled at or attend an eligible educational institution. Amounts paid for any course or other education involving sports, games, or hobbies are not eligible for the credit, unless the course or other education is part of the student's degree program. Charges and fees associated with room, board, student activities, athletics, insurance, books, equipment, transportation, and similar personal, living, or family expenses are not qualified tuition and related expenses.

An eligible educational institution is a college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, is eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions.

Notice 97-60, 1997-46 I.R.B. 8, provides additional information about the Hope Scholarship Credit and the Lifetime Learning Credit.

B. Information Reporting Relating to Qualified Tuition and Related Expenses.

Section 6050S(a) requires eligible educational institutions that receive payments of qualified tuition and related expenses or make reimbursements or refunds of qualified tuition and related expenses to submit an annual information report to the Service with respect to each student on whose behalf the payments are received or the reimbursements or refunds are made. Section 6050S(a) also requires each person engaged in a trade or business who makes a reimbursement or re-

fund of qualified tuition and related expenses to submit an annual information report to the Service with respect to each student on whose behalf the reimbursements or refunds are paid. The terms "eligible educational institution" and "qualified tuition and related expenses" have the same meanings for purposes of § 6050S as they do for purposes of the Hope Scholarship Credit and the Lifetime Learning Credit.

Section 6050S(b) provides that the return of information must be in the form prescribed by the Secretary and contain:

(1) the name, address, and taxpayer identification number (TIN) of the individual with respect to whom the qualified tuition and related expenses were received or the reimbursement or refund was paid,

(2) the name, address, and TIN of any individual certified by the individual named in the first item as the taxpayer who will claim that individual as a dependent for purposes of the deduction under § 151 for any taxable year ending with or within the year for which the information return is filed,

(3) the aggregate amount of payments of qualified tuition and related expenses received by the eligible educational institution or the aggregate amount of reimbursements or refunds (or similar amounts) paid during the calendar year with respect to the individual named in the first item, and

(4) such other information as the Secretary may prescribe.

Section 6050S(d) provides that every person required to make an information return under § 6050S(a) shall furnish to each individual whose name is required to be included in the return a written statement showing the name, address, and phone number of the reporting person's information contact, and the aggregate amounts required to be included in the return.

DISCUSSION

A. Who Must File for 1998.

For 1998, an eligible educational institution that receives payments of qualified tuition and related expenses in 1998 must file an information return with the Service with respect to each student on whose behalf payments were received. An eligible educational institution that makes reim-

bursments or refunds of tuition or related expenses to a student during 1998, that equal or exceed payments of qualified tuition or related expenses received on behalf of that student during 1998, is not required to file an information return or furnish a statement with respect to that student for 1998.

An institution is not required to provide a report with respect to a student whose tuition and related expenses were waived in their entirety or paid entirely with scholarships because it will have received no payments of qualified tuition and related expenses on behalf of such a student.

Persons, other than eligible educational institutions, engaged in a trade or business and making reimbursements or refunds of qualified tuition and related expenses will not be required to file information returns or furnish statements of reimbursements or refunds for 1998.

For purposes of providing these information reports, an eligible educational institution should provide reports on students who are enrolled in the institution for any academic term beginning in 1998. An institution should determine its enrollment for each term as of any of the following three dates:

- (a) 30 days after the first day of the academic term;
- (b) a date during the term on which enrollment data must be collected for purposes of the Integrated Postsecondary Education Data System administered by the Department of Education; or
- (c) a date during the term on which the institution must report enrollment data to the State, the institution's governing board or some other external governing body.

An institution should provide a single information report for each student on whose behalf qualified tuition and related expenses have been received in 1998 even if the institution receives more than one payment on that student's behalf during 1998.

B. Information Required for 1998.

Eligible educational institutions required under this notice to file information returns for 1998 must properly complete Form 1098-T, Tuition Payments, for each student with respect to whom information reporting is required. For 1998, a

properly completed Form 1098-T filed with the Service must include:

(1) the name, address, and TIN of the eligible educational institution,

(2) the name, address, and TIN of the individual with respect to whom payments of qualified tuition and related expenses were received during 1998,

(3) an indication as to whether the individual named in the second item was enrolled for at least half the full-time academic workload during any academic period commencing in 1998, and

(4) an indication as to whether the individual named in the second item was enrolled exclusively in a program or programs leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential.

For purposes of section 25A and the reporting required under § 6050S, a student will be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution where the student is enrolled. The institution's standard for a full-time workload must equal or exceed the standards established by the Department of Education under the Higher Education Act and set forth in 34 C.F.R. § 674.2(b).

Although in the future institutions will be required to provide the additional information specified in § 6050S (*e.g.*, the amount of qualified tuition and related expenses received and/or reimbursed), the IRS will not impose penalties on an institution that does not provide this information for 1998.

C. When To File

The information returns required under § 6050S for 1998 must be sent to the Service by March 1, 1999.

D. Manner of Filing

Eligible educational institutions may file the information returns required by § 6050S for 1998 on paper or by magnetic media. Additional guidance will be issued providing further information on how to file returns by magnetic media. In addition, the Service is exploring electronic filing options and will issue further guidance when such options become available.

E. Statements To Be Provided to Students

Each eligible educational institution must provide each student with respect to whom an information return is filed a statement containing the same information that is provided to the Service on the information return required by § 6050S. In addition, the statement provided to the student must contain the phone number of the individual serving as information contact at the eligible educational institution that made the return. The statement with respect to qualified tuition and related expenses paid in 1998 must be provided to the student by February 1, 1999. The statement may be a copy of Form 1098-T or an acceptable substitute statement.

F. Collecting Information

The Service is developing an optional Form W-9S for use in collecting information for the purpose of complying with § 6050S. Eligible educational institutions will be able to use the form to collect a student's name, address, and TIN. The form is being designed so that it can also be used to collect any information necessary to meet the information reporting requirements associated with the student loan interest deduction provided by new § 221. Eligible educational institutions will be able to collect information from students for 1998 information reporting purposes on a paper or an electronic version of Form W-9S (or an acceptable substitute). The eligible educational institution also may collect the necessary information by using its own forms and procedures.

Eligible educational institutions that are also federal, state or local government agencies are required to provide certain disclosures under the Privacy Act when collecting social security numbers from individuals. *See* 5 U.S.C. § 552a. The Form W-9S will contain a Privacy Act disclosure statement.

G. Waiver of Penalties.

The Treasury Department intends to issue regulations under § 6050S providing guidance on how institutions are to comply with the requirements of the statute. Until the regulations are adopted, no penalties will be imposed under

§§ 6721 and 6722 for failure to file correct information returns with the Service or to furnish correct statements to the individuals with respect to whom information reporting is required under § 6050S. Furthermore, even after the regulations are adopted, no penalties will be imposed under §§ 6721 and 6722 for failure to file correct information returns or furnish correct written statements for 1998 as required by § 6050S if the institution made a good faith effort to file information returns and furnish statements in accordance with this notice.

DRAFTING INFORMATION

The principal author of this notice is John McGreevy of the Office of the Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact him on (202) 622-4910 (not a toll-free call).

Weighted Average Interest Rate Update

Notice 97-74

Notice 88-73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for November 1997 is 6.11 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 107% Permissible Range	90% to 110% Permissible Range
December	1997	6.79	6.11 to 7.26	6.11 to 7.47

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 p.m. Eastern time (not a toll-free

number). Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).

Minimum Distribution Requirements

Notice 97-75

I. PURPOSE

This notice provides guidance relating to the amendments to the minimum distribution requirements of § 401(a)(9) of the Internal Revenue Code ("Code") made by § 1404 of the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA"). Specifically, this notice:

- Answers questions regarding the actuarial increase that must be provided under a defined benefit plan for an employee who retires after age 70½, and the interaction of this actuarial increase with § 411.
- Coordinates the § 401(a)(4) nondiscrimination requirements with the § 401(a)(9) requirement that certain pre-retirement distribution options be available to an employee at age 70½.
- Permits plans to allow participants who commenced distributions under pre-SBJPA § 401(a)(9) to stop receiving those distributions, and provides guidance on the applicable notice and spousal consent requirements.
- Clarifies the extent to which distributions made after 1996 to an employee who has attained age 70½ will be considered eligible rollover distributions under § 402(c)(4)(B).
- Gives relief from the direct rollover requirements of § 401(a)(31), the written explanation requirement under § 402(f) and the mandatory 20-percent withhold-

ing requirement under § 3405(c) for certain distributions made in 1997.

- Provides an optional rule under which an employee's required beginning date under pre-SBJPA § 401(a)(9) may be retained.

II. BACKGROUND

Section 401(a)(9) provides that, in order for a plan to be qualified under § 401(a), distributions of each employee's interest in the plan must commence no later than the "required beginning date" for the employee. Prior to the amendments made by the SBJPA, § 401(a)(9)(C) generally defined the required beginning date for an employee as the April 1 of the calendar year following the calendar year in which the employee attained age 70½. This meant that an employee who attained age 70½ was required to commence receiving distributions from the plan during the following year, even if the employee had not retired from employment with the employer maintaining the plan.

Section 1404(a) of the SBJPA amended § 401(a)(9) of the Code to provide that, in the case of an employee who is not a 5-percent owner, the required beginning date for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. In the case of an employee who is a 5-percent owner, the required beginning date continues to be the April 1 of the calendar year following the calendar year in which the employee attains age 70½. An employee is treated as a 5-percent owner for purposes of § 401(a)(9) as amended by the SBJPA if such employee is a 5-percent owner (as defined in § 416) with respect to the plan year ending with or within the calendar year in which such owner attains age 70½. Once an employee is a 5-percent owner described in the preceding sentence, distributions must continue to such employee even if such employee ceases to own more than 5 percent of the employer in a subsequent year.

Section 1404(a) of the SBJPA also amended § 401(a)(9) of the Code to provide that an employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan. The amendments to § 401(a)(9) of the Code apply to years beginning after December 31, 1996.

The amendments retain the existing rules relating to the determination of the required beginning date for distributions