

TD 9430
Information Reporting for Discharges of Indebtedness

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1
[TD 9430]
RIN 1545-BH99
Information Reporting for Discharges of Indebtedness
AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations. The text of these temporary regulations also serves as the text of the proposed regulations as set forth in the Proposed Rules section in this issue of the Federal Register.

DATES: Effective Date: These regulations are effective on November 10, 2008.

Applicability Date: For dates of applicability, see Sec. 1.6050P-1T(h).

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni at (202) 622-4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. The amendments will reduce the number of information reports required to be filed under section 6050P.

In general, section 6050P requires certain entities to file information returns with the IRS, and to furnish information statements to debtors, reporting discharges of indebtedness of \$600 or more. As originally enacted by the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 (107 Stat. 312, 531-532 (1993)), section 6050P applied solely to “applicable financial entities,” which was then defined to include only financial institutions, credit unions, and Federal executive agencies.

In 1996, final regulations were published implementing section 6050P. See TD 8654, 61 FR 262 (January 4, 1996) (the 1996 regulations). The 1996 regulations required applicable financial entities, as then defined, to issue Forms 1099-C, “Cancellation of Debt,” upon the occurrence of one of several “identifiable events” as provided in Sec. 1.6050P-1(b)(2)(i)(A) through (H). One of these identifiable events requiring the issuance of a Form 1099-C was the expiration of a “non-payment testing period” pursuant to Sec. 1.6050P-1(b)(2)(i)(H). The 1996 regulations created a rebuttable presumption (the “36-month rule”) under Sec. 1.6050P-1(b)(2)(iv) that this period expired if a creditor had not received a payment for 36 months. Section 1.6050P-1(b)(2)(iv) provides that the presumption that an identifiable event occurred can be rebutted by a creditor if the creditor had engaged in significant, bona fide collection activity.

After the issuance of the 1996 regulations, the Debt Collection Improvement Act of 1996, Public Law 104-134 (110 Stat. 1321, 368-369 (1996)) (the 1996 Act), expanded section 6050P to cover any executive, judicial, or legislative agency (as defined in 31 U.S.C. 3701(a)(4)) as well as any applicable financial entity. The 1996 Act was effective April 26, 1996. The Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170 (113 Stat. 1860, 1931 (1999)) (the 1999 Act), further expanded section 6050P by expanding the

definition of “applicable financial entity” to include any organization “a significant trade or business of which is the lending of money.” The 1999 Act was effective for discharges of indebtedness occurring after December 31, 1999.

In 2002, the IRS and the Treasury Department published proposed regulations to reflect the changes to section 6050P. See REG-107524-00, 67 FR 40629 (June 13, 2002). The IRS received written (including electronic) comments on the proposed regulations and a public hearing was held on October 8, 2002. After consideration of the comments received, the IRS adopted the proposed regulations with amendments. See TD 9160, 69 FR 62181 (October 25, 2004) (the 2004 regulations). Section 1.6050P-2 of the 2004 regulations describes the circumstances in which an organization has a significant trade or business of lending money, thereby triggering an information reporting requirement when it cancels debt.

Reasons for Change

The 36-month rule of Sec. 1.6050P-1(b)(2)(iv) was drafted at a time when section 6050P applied only to financial institutions, credit unions, and Federal executive agencies and did not extend to any executive, judicial, or legislative agency or any organization “a significant trade or business of which is the lending of money.” Since the publication of the 2004 regulations, commenters have raised the concern that the application of the 36-month rule to entities with a significant trade or business of lending money might trigger a reporting requirement even when the entity has not legally or practically discharged the debt. The IRS and the Treasury Department agree that it is appropriate to limit the application of the 36-month rule to the entities for which it was originally intended in order to avoid premature information reporting of cancellation of indebtedness income. Doing so will reduce the information reporting burden on entities that were not originally within the scope of the 36-month rule and will protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from such entities.

The Treasury Department and IRS are still considering other comments received since the publication of the 2004 regulations, including a request to clarify the meaning of “stated principal” in Sec. 1.6050P-1(c) and (d)(3) when it is applied to those who acquire a loan from a person other than the debtor. Section 1.6050P-1(c) provides that “indebtedness” for purposes of section 6050P means any amount owed to an applicable entity, including stated principal, fees, stated interest, penalties, administrative costs, and fines. Section 1.6050P-1(d)(3) further provides that, in the case of a lending transaction, the discharge of an amount other than stated principal is not required to be reported under section 6050P. Commenters have stated that it is unclear whether the simplifying rule limiting an information report to the amount of stated principal can be applied to loan acquirers. Commenters have asserted that loan acquirers might know only the aggregate amount due on the loans they are purchasing, not the breakdown of that amount into principal and accrued interest or fees. Therefore, if loan acquirers discharge an aggregate amount, it is difficult for them to determine how much is required to be reported under section 6050P. The Treasury Department and IRS is considering issuing future guidance under section 6050P to address these concerns.

Explanation of Provisions

The temporary regulations and amendments to existing regulations limit the application of the 36-month rule to the entities described in the 1993 Act. The temporary regulations avoid premature information reporting from certain entities that are currently required to report under section 6050P. Notwithstanding this limitation, the temporary regulations provide that, in the case of an entity previously subject to the 36-month rule that was required to file information returns in a tax year prior to 2008 due to application of the 36-month rule, and who failed to so file, the date of discharge is the first identifiable event, if any, described in Sec. 1.6050P-(b)(2)(i)(A) through (G) that occurs after 2007. Thus, any entity previously subject to the 36-month rule that has never filed an information return remains subject to the information reporting requirement upon the occurrence of any of the other identifiable events.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the Federal Register. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been 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 temporary regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 * * *

Par. 2. Section 1.6050P-0 is amended as follows:

1. The introductory text is revised.
2. A new entry for Sec. 1.6050P-1(b)(2)(v) is added.
3. The entry for Sec. 1.6050P-1(h) is revised.
4. A new entry for Sec. 1.6050P-1T is added.

The revisions and additions read as follows:

Sec. 1.6050P-0. Table of contents.

This section lists the major captions that appear in Sec. 1.6050P-1, Sec. 1.6050P-1T, and Sec. 1.6050P-2.
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Sec. 1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

(b) * * *

(2) * * *

(v) [Reserved] For further guidance, see the entry for Sec. 1.6050P-1T(b)(2)(v).

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(h) Effective/applicability date.

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Sec. 1.6050P-1T Information reporting for discharges of indebtedness by certain entities (temporary).

(b) * * *

(2) * * *

(v) Special rule for certain entities required to file in a year prior to 2008.

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Par. 3. Section 1.6050P-1 is amended as follows:

1. Paragraph (b)(2)(i)(H) and the heading for paragraph (h) are revised.

2. A new entry for (b)(2)(v) is added.

The addition and revisions read as follows:

Sec. 1.6050P-1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(H) [Reserved]. For further guidance, see Sec. 1.6050P-1T(b)(2)(i)(H).

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(v) [Reserved]. For further guidance, see Sec. 1.6050P-1T(b)(2)(v).

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(h) Effective/applicability date. * * *

Par. 4. Section 1.6050P-1T is added to read as follows:

Sec. 1.6050P-1T Information reporting for discharges of indebtedness by certain entities (temporary).

(a) through (b)(2)(i)(G) [Reserved]. For further guidance, see 1.6050P-1(a) through (b)(2)(i)(G).

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the non-payment testing period, as described in Sec. 1.6050P-1(b)(2)(iv).

(b)(2)(ii) through (iv) [Reserved]. For further guidance, see Sec. 1.6050P-1(b)(2)(ii) through (iv).

(v) Special rule for certain entities required to file in a year prior to 2008. In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H), and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

(b)(3) through (g) [Reserved]. For further guidance see Sec. 1.6050P-1(b)(3) through (g).

(h) Effective/applicability date--(1) In general. The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

(2) [Reserved]. For further guidance, see Sec. 1.6050P-1(h)(2).

(i) Expiration date. The applicability of this section will expire on or before November 7, 2011.

Approved: October 28, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).