

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9029]

RIN 1545-BA43

Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code, including rules prescribing when the required information returns must be filed on magnetic media. The final regulations reflect changes made to the law by the Taxpayer Relief Act of 1997 and the amendments made by the Internal Revenue Service Restructuring and Reform Act of 1998 and Public Law 107-131. These regulations provide guidance to eligible educational institutions that enroll any individual for any academic period. These regulations also provide guidance to insurers that make reimbursements or refunds of qualified tuition and related expenses.

DATES: *Effective Date:* These regulations are effective December 19, 2002.

Applicability Dates: For dates of applicability, see § 1.6050S-1(f) and § 301.6011-2(g)(3).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Tonya Christianson, (202) 622-4910; and concerning the magnetic media filing specifications, waivers for filing on magnetic media, and extensions of time, contact the IRS, Martinsburg Computing Center, (304) 263-8700 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1678. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control

number assigned by the Office of Management and Budget.

The estimated reporting burden for the reporting in these regulations is reflected on the burden for Form 1098-T.

Estimated total annual reporting burden for 2001 for Form 1098-T: 3,056,411 hours.

Estimated number of responses for 2001 for Form 1098-T as of November 22, 2002: 20,376,075.

Estimated average annual burden hours per response for 2001 for Form 1098-T: 9 minutes.

Comments concerning the accuracy of this burden and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to the information reporting requirements for qualified tuition and related expenses under section 6050S of the Internal Revenue Code (Code) and amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to magnetic media reporting. The Taxpayer Relief Act of 1997 (Public Law 105-34 (111 Stat. 788) (TRA '97)) added section 6050S of the Code. Section 6050S was amended by the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206 (112 Stat. 685) (RRA '98)), and Public Law 107-131 (115 Stat. 2410). In general, section 6050S requires any eligible educational institution (institution) to file information returns and to furnish written information statements to assist taxpayers and the Internal Revenue Service (IRS) in determining the amount of qualified tuition and related expenses (qualified expenses) for which an education tax credit is allowable under section 25A (as well as other tax benefits for higher education expenses). See H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess., pp. 319-320 (1998).

As provided by Public Law 107-131, for calendar years beginning after

December 31, 2002, institutions may elect to report either the aggregate amount of payments received, or the aggregate amount billed, for qualified expenses during the calendar year with respect to individuals enrolled for any academic period. Institutions must report separately adjustments (*i.e.*, refunds of payments or reductions in charges) made during the calendar year to payments received, or amounts billed, for qualified expenses that were reported in a prior calendar year. In addition, institutions must report the aggregate amount of scholarships or grants received for an individual's costs of attendance that the institution administered and processed during the calendar year. Institutions must report separately adjustments (*i.e.*, refunds or reductions) made during the calendar year to scholarships that were reported in a prior calendar year.

In addition, section 6050S requires any person engaged in a trade or business of making payments to any individual under an insurance agreement as reimbursements or refunds of qualified expenses (an insurer) to file information returns and to furnish written information statements.

A notice of proposed rulemaking under section 6050S (REG-105316-98) was published in the **Federal Register** (65 FR 37728) on June 16, 2000 (the 2000 proposed regulations). The 2000 proposed regulations relating to the information reporting requirements for institutions and insurers were withdrawn and a new notice of proposed rulemaking (REG-161424-01) was published in the **Federal Register** (67 FR 20923) on April 29, 2002 (the 2002 proposed regulations). No request for a public hearing was received on the 2002 proposed regulations. The IRS received written and electronic comments responding to the 2002 notice of proposed rulemaking. After consideration of all the comments, the 2002 proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions and Summary of Comments

1. Information Reporting Relating to Qualified Tuition and Related Expenses

A. Required Reporting and Exceptions to Reporting

(i) Reporting Based on Academic Year vs. Calendar Year

One commentator to the 2002 proposed regulations requested that institutions be allowed to report financial data based on an academic year, and not based on a calendar year.

Section 6050S requires institutions to report on a calendar year in order to assist taxpayers in calculating the education tax credit that is allowable for qualified expenses paid during a calendar year. Therefore, the final regulations do not adopt this recommendation.

(ii) Exception for Noncredit Courses

The 2002 proposed regulations provide an exception to reporting for any student who is enrolled during the calendar year only in courses for which no academic credit is offered. Several commentators to the 2002 proposed regulations requested that if a student is enrolled both in courses for which academic credit is offered (*e.g.*, courses in a postsecondary degree program) and courses for which no academic credit is offered (*e.g.*, courses in a continuing education program), institutions should be required to report only the courses for which academic credit is offered. The commentators suggested that the exception to reporting should be based on the category of courses, not the category of students. The commentators explained that institutions maintain separate databases for credit courses and noncredit courses and that it would create a substantial hardship if institutions were required to report for both credit courses and noncredit courses. In response to these comments, and because under section 25A and the regulations thereunder a student enrolled in a postsecondary degree program is not eligible to claim a Hope Scholarship Credit (and may not be eligible to claim a Lifetime Learning Credit) for noncredit courses, the final regulations adopt this recommendation. Accordingly, the final regulations provide that institutions are not required to report with respect to courses for which no academic credit is offered by the institution, even if the student is enrolled in a degree program.

(iii) No Exception for Small Amounts of Qualified Tuition and Related Expenses

One commentator to the 2002 proposed regulations requested that the regulations provide an exception to reporting for qualified expenses of \$100 or less. The limited exceptions to required reporting are based on the fact that certain categories of students may not be eligible to claim the education tax credit and that certain payments may not be taken into account in calculating the amounts paid for qualified expenses for which an education tax credit is allowable. An exception to reporting for small amounts of qualified expenses has no relationship to whether an education tax

credit is allowable for amounts paid for qualified expenses. Therefore, the final regulations do not adopt this recommendation.

(iv) Exception for Students Whose Qualified Expenses Are Covered by Formal Billing Arrangement

The 2002 proposed regulations provide an exception to reporting for any student whose qualified expenses are paid by the student's employer through a formal billing arrangement under which the employer's employees attend the institution, the institution bills only the employer, and the institution does not maintain a separate account for any employee/student. Several commentators to the 2002 proposed regulations requested that this exception be expanded to include formal billing arrangements between institutions and other third party payors, such as the Veterans' Administration, U.S. Armed Forces, and other governmental and private organizations.

Under section 25A and the regulations thereunder, a taxpayer cannot claim the education tax credit for educational expenses paid with amounts that are excludable from gross income. Educational expenses paid through a formal billing arrangement between an institution and a governmental entity, such as the Veterans' Administration, often are excludable from the gross income of the individual student. Therefore, the final regulations expand the exception to cover formal billing arrangements between an institution and a governmental entity under which the institution bills only the governmental entity and does not maintain a separate account with respect to any individual student. In addition, the final regulations authorize the Commissioner to designate additional types of formal billing arrangements for which no reporting will be required. It is anticipated that any additional formal billing arrangements designated by the Commissioner will be limited to situations in which the individual students generally would not be eligible to claim an education tax credit with respect to the payments made by the institutional third party payor.

(v) Family Educational Rights and Privacy Act and Optional Reporting

The U.S. Department of Education has previously determined that reporting under section 6050S does not violate the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g). Several commentators to the 2002 proposed regulations requested clarification as to

whether an institution that chooses to report on all students under section 6050S, even if the regulations provide an exception to required reporting, would violate FERPA. After the 2002 proposed regulations were issued, the Treasury Department asked the Department of Education to consider whether its earlier determination would extend to an institution that chooses to report on students otherwise covered by an exception to required reporting. The Department of Education has recently determined that an institution will not violate FERPA if it chooses to report information on all students in accordance with section 6050S, even if the regulations provide an exception to required reporting.

B. Required Information for Institutions

(i) Reporting Amounts Billed in One Year That Relate to an Academic Period That Begins During the First Three Months of the Next Year

Several commentators to the 2002 proposed regulations requested that the final regulations eliminate the requirement that institutions indicate that amounts reported as billed in one calendar year relate to qualified expenses for an academic period that begins during the first three months of the next calendar year. The commentators explained that most institutions bill late in one calendar year for the qualified expenses that relate to an academic period that begins in the first three months of the next calendar year. The commentators questioned the usefulness of this information.

Under section 25A and the regulations thereunder, the education tax credit is allowable only for amounts actually paid during the calendar year for an academic period that begins during the same calendar year or during the first three months of the next calendar year. Therefore, there may be situations where an institution reports amounts billed for qualified expenses in one calendar year that relate to an academic period that begins during the first three months of the next calendar year, and the taxpayer pays the qualified expenses in the next calendar year. In this situation, the taxpayer and the IRS should be advised that the amounts reported as billed during a calendar year may not be amounts for which the taxpayer may claim the education tax credit for that year. Therefore, the final regulations do not adopt this recommendation.

(ii) Reporting Requirements for Increases to Charges for Qualified Expenses and Grants Reported for a Prior Calendar Year

One commentator requested clarification as to whether the 2002 proposed regulations purposely did not require separate reporting for increases to charges for qualified expenses and grants reported by the institution for a prior calendar year. The amendments to section 6050S by Public Law 107-131 require institutions to report the aggregate amount of charges for qualified expenses and the aggregate amount of grants administered and processed during the calendar year. These aggregate amounts would include any increases in charges for qualified expenses that relate to a prior year and any increases in grants that relate to a prior year. Therefore, no separate reporting is required for increases to charges for qualified expenses and grants that relate to a prior year.

(iii) Information Contact

The 2002 proposed regulations require institutions and insurers to include on the information statement furnished to the student the name, address, and phone number of the office or department within the institution or insurer that is the information contact. Several commentators requested that the regulations be revised to allow third party service providers that file information returns on behalf of the institutions or the insurers, as well as a third party call centers, to be designated as the information contact. Consistent with section 6050S(d)(1), the final regulations require institutions and insurers to include the name, address, and phone number of the information contact of the person required to file the information return. This provision does not preclude any institution or insurer that is required to file an information return from including, in addition to its own name, address, and phone number, the name, address, and phone number of a third party service provider.

C. Information Reporting Penalties

(i) Filing Information Returns With Missing TINs

Several commentators to the 2002 proposed regulations requested that institutions not be required to file information returns and to furnish information statements for students who refuse to provide their TINs. Information returns and information statements with missing TINs are useful to both the IRS and the taxpayer in verifying the amount of any allowable education tax credit (as well as other tax

benefits for higher education expenses). Therefore, the final regulations do not adopt this recommendation.

2. Requirement To File Information Returns on Magnetic Media

The final regulations amend the regulations under section 6011(e) to require institutions and insurers who are required to file 250 or more Forms 1098-T, "Tuition Statement," to file on magnetic media.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. A final regulatory flexibility analysis has been prepared for the collection of information in this Treasury decision. This analysis is set forth in this preamble under the heading "Final Regulatory Flexibility Analysis." Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Final Regulatory Flexibility Analysis

The collection of information contained in § 1.6050S-1 is needed to assist the IRS and taxpayers in determining the amount of any education tax credit allowable under section 25A (as well as other tax benefits for higher education expenses). The objectives of these final regulations are to provide uniform, practicable, and administrable rules under section 6050S. The types of small entities to which the regulations may apply are small eligible educational institutions (such as colleges and universities) and certain insurers who reimburse educational expenses.

There are no known Federal rules that duplicate, overlap, or conflict with these regulations. The regulations are considered to have the least economic impact on small entities of all alternatives considered.

Moreover, the regulations requiring filing Forms 1098-T on magnetic media impose no additional reporting or record keeping and only prescribe the method of filing information returns that are already required to be filed. Further, these regulations are consistent with the statutory requirement that an institution or insurer is not required to file Forms 1098-T on magnetic media unless required to file at least 250 or

more returns during the year. Finally, the economic impact caused by requiring Forms 1098-T on magnetic media should be minimal because most institutions' or insurers' operations are computerized. Even if their operations are not computerized, the incremental cost of magnetic media reporting should be minimal in most cases because of the availability of computer service bureaus. In addition, the existing regulations under section 6011(e) provide that the IRS may waive the magnetic media filing requirements on a showing of hardship. The waiver authority will be exercised so as not to unduly burden institutions and insurers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Drafting Information

The principal author of the regulations is Tonya Christianson, Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income tax, Reporting and record keeping requirements.

26 CFR Part 301

Employment tax, Estate tax, Excise tax, Gift tax, Income tax, Penalties, Reporting and record keeping requirements.

26 CFR Part 602

Reporting and recordkeeping.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAX

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6050S-1 also issued under section 26 U.S.C. 6050S(g). * * *

2. Section 1.6050S-0 is amended by revising the introductory language and adding new entries for § 1.6050S-1 to read as follows:

§ 1.6050S-0 Table of contents

This section lists captions contained in §§ 1.6050S-1, 1.6050S-2T, 1.6050S-3, and 1.6050S-4T.

§ 1.6050S-1 Information reporting for qualified tuition and related expenses.

- (a) Information reporting requirement.
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 - (A) In general.
 - (B) Formal billing arrangement defined.
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 - (1) In general.
 - (2) Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses.
 - (i) In general.
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 - (iii) Reportable amount of payments received for qualified tuition and related expenses during calendar year determined.
 - (iv) Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year.
 - (v) Payments received for qualified tuition and related expenses determined.
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 - (vii) Examples.
 - (3) Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses.
 - (i) In general.
 - (ii) Information included on return.
 - (iii) Reportable amounts billed for qualified tuition and related expenses during calendar year determined.
 - (iv) Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year.
 - (v) Examples.
 - (4) Requirements for insurers.
 - (i) In general.
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 - (i) In general.
 - (ii) Return for nonresident alien individual.
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 - (6) Use of magnetic media.
 - (c) Requirement to furnish statement.
 - (1) In general.
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 - (ii) Statement to nonresident alien individual.
 - (iii) Extensions of time.
 - (3) Copy of Form 1098-T.
 - (d) Special rules.
 - (1) Enrollment determined.

(2) Payments of qualified tuition and related expenses received or collected by one or more persons.

(i) In general.

(ii) Exception.

(3) Governmental units.

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(1) Failure to file correct returns.

(2) Failure to furnish correct information statements.

(3) Waiver of penalties for failures to include a correct TIN.

(i) In general.

(ii) Acting in a responsible manner.

(iii) Manner of soliciting TIN.

(4) Failure to furnish TIN.

(f) Effective date.

* * * * *

3. Section 1.6050S-1 is added to read as follows:

§ 1.6050S-1 Information reporting for qualified tuition and related expenses.

(a) *Information reporting requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, any eligible educational institution (as defined in section 25A(f)(2) and the regulations thereunder) (an institution) that enrolls (as determined under paragraph (d)(1) of this section) any individual for any academic period (as defined in the regulations under section 25A), and any person that is engaged in a trade or business of making payments under an insurance arrangement as reimbursements or refunds (or other similar amounts) of qualified tuition and related expenses (as defined in section 25A(f)(1) and the regulations thereunder) (an insurer) must—

(i) File an information return, as described in paragraph (b) of this section, with the Internal Revenue Service (IRS) with respect to each individual described in paragraph (b) of this section; and

(ii) Furnish a statement, as described in paragraph (c) of this section, to each individual described in paragraph (c) of this section.

(2) *Exceptions*—(i) *No reporting by institution or insurer for nonresident alien individuals.* The information reporting requirements of this section do not apply with respect to any individual who is a nonresident alien (as defined in section 7701(b) and § 301.7701(b)-3 of this chapter) during the calendar year, unless the individual requests the institution or insurer to report. If a nonresident alien individual requests an institution or insurer to report, the institution or insurer must comply with the requirements of this section for the calendar year with respect to which the request is made.

(ii) *No reporting by institutions for noncredit courses*—(A) *In general.* The

information reporting requirements of this section do not apply with respect to any course for which no academic credit is offered by the institution.

(B) *Academic credit defined.*

Academic credit means credit offered by an institution for the completion of course work leading toward a post-secondary degree, certificate, or other recognized post-secondary educational credential.

(C) *Example.* The following example illustrates the rules of this paragraph (a)(2)(ii):

Example. Student A, a medical doctor, takes a course at University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education division. University X does not offer credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. Under this paragraph (a)(2)(ii), University X is not subject to the information reporting requirements of section 6050S and this section for the medical education course taken by Student A.

(iii) *No reporting by institutions for individuals whose qualified tuition and related expenses are waived or are paid with scholarships.* The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are waived in their entirety or are paid entirely with scholarships.

(iv) *No reporting by institutions for individuals whose qualified tuition and related expenses are covered by a formal billing arrangement*—(A) *In general.* The information reporting requirements of this section do not apply with respect to any individual whose qualified tuition and related expenses are covered by a formal billing arrangement as defined in paragraph (a)(2)(iv)(B) of this section.

(B) *Formal billing arrangement defined.* A *formal billing arrangement* means—

(1) An arrangement in which the institution bills only an employer for education furnished by the institution to an individual who is the employer's employee and does not maintain a separate financial account for that individual;

(2) An arrangement in which the institution bills only a governmental entity for education furnished by the institution to an individual and does not maintain a separate financial account for that individual; or

(3) Any other similar arrangement in which the institution bills only an institutional third party for education furnished to an individual and does not maintain a separate financial account for that individual, but only if designated as a formal billing arrangement by the Commissioner in published guidance of general applicability or in guidance directed to participants in specific arrangements.

(b) *Requirement to file return*—(1) *In general.* Institutions may elect to report either the information described in paragraph (b)(2) of this section, or the information described in paragraph (b)(3) of this section. Once an institution elects to report under either paragraph (b)(2) or (3) of this section, the institution must use the same reporting method for all calendar years in which it is required to file returns, unless permission is granted to change reporting methods. Paragraph (b)(2) of this section requires institutions to report, among other information, the amount of payments received during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to payments received for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(2) of this section, an adjustment made to payments received means a reimbursement or refund. Paragraph (b)(3) requires institutions to report, among other information, the amounts billed during the calendar year for qualified tuition and related expenses. Institutions must report separately adjustments made during the calendar year that relate to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year. For purposes of paragraph (b)(3) of this section, an adjustment made to amounts billed means a reduction in charges. Insurers must report the information described in paragraph (b)(4) of this section.

(2) *Information reporting requirements for institutions that elect to report payments received for qualified tuition and related expenses*—

(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting payments received for qualified tuition and related expenses must file an information return with the IRS on Form 1098-T, "Tuition Statement," with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a transaction described in paragraphs (b)(2)(ii)(C), (E),

(F) or (G) of this section is made during the calendar year. An institution may use a substitute Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms (see § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An institution reporting payments received for qualified tuition and related expenses must include on Form 1098-T—

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

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount of payments of qualified tuition and related expenses that the institution received from any source with respect to the individual during the calendar year;

(D) An indication by the institution whether any payments received for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reimbursements or refunds of qualified tuition and related expenses made during the calendar year with respect to the individual that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098-T and its instructions.

(iii) *Reportable amount of payments received for qualified tuition and related expenses during calendar year determined.* The amount of payments

received for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098-T is determined by netting the amount of payments received (as defined in paragraph (b)(2)(v) of this section) for qualified tuition and related expenses during the calendar year against any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the calendar year that relate to payments received for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098-T any reimbursements or refunds (as defined in paragraph (b)(2)(vi) of this section) made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reimbursements or refunds shall not be netted against the payments received for qualified tuition and related expenses during the current calendar year.

(v) *Payments received for qualified tuition and related expenses determined.* For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated as payments of qualified tuition and related expenses up to the total amount billed by the institution for such expenses. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges.

(vi) *Reimbursements or refunds of payments for qualified tuition and related expenses determined.* For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of a scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board) is treated as a reimbursement or refund of

payments for qualified tuition and related expenses up to the amount of any reduction in charges for such expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.

(vii) *Examples.* The following examples illustrate the rules in this paragraph (b)(2):

Example 1. (i) In early August 2003, University X bills enrolled Student A \$10,000 for qualified tuition and related expenses and \$6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays \$11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X credits \$5,000 to Student A's account, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses. In late September 2003, University X applies the \$5,000 positive account balance toward current charges.

(ii) Under paragraph (b)(2)(v) of this section, the \$11,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$5,000 credited to the student's account is treated as a reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by \$5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the \$10,000 payment received for qualified tuition and related expenses during 2003 against the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that Student A pays the full \$16,000 in late August 2003. In late September 2003, University X reduces the tuition charges by \$5,000 and issues a \$5,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the \$16,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$5,000 refund is treated as reimbursement or refund of payments for qualified tuition and related expenses, because the current year charges for qualified tuition and related expenses were reduced by \$5,000. Under paragraph (b)(2)(iii) of this section, University X is required to net the \$10,000 payment received for qualified tuition and related expenses during 2003 against the \$5,000 reimbursement or refund of payments received for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report \$5,000 of payments received for qualified tuition and related expenses during 2003.

Example 3. (i) The facts are the same as in *Example 1*, except that Student A is enrolled full-time, and, in early September 2003, Student A decides to live at home with her parents. In late September 2003, University X adjusts Student A's account to eliminate room and board charges and issues a \$1,000 refund to Student A.

(ii) Under paragraph (b)(2)(v) of this section, the \$11,000 payment is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(vi) of this section, the \$1,000 refund is not treated as reimbursement or refund of payments for qualified tuition and related expenses, because there is no reduction in charges for qualified tuition and related expenses. Therefore, under paragraph (b)(2)(iii) of this section, University X is required to report \$10,000 of payments received for qualified tuition and related expenses during 2003.

Example 4. (i) In early December 2003, College Y bills enrolled Student B \$10,000 for qualified tuition and related expenses and \$6,000 for room and board for the 2004 Spring semester. In late December 2003, Student B pays \$16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student B drops to half-time enrollment. In mid-January 2004, College Y credits Student B's account with \$5,000, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund to Student B. In early August 2004, College Y bills Student B \$10,000 for qualified tuition and related expenses \$6,000 for room and board for the 2004 Fall semester. In early September 2004, College Y applies the \$5,000 positive account balance toward Student B's \$16,000 bill for the 2004 Fall semester. In late September 2004, Student B pays \$6,000 towards the charges.

(ii) In the reporting for calendar year 2003, under paragraph (b)(2)(v) of this section, the \$16,000 payment in December 2003 is treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for qualified tuition and related expenses. Under paragraph (b)(2)(iii) of this section, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2003. In addition, College Y is required to indicate that the payments reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) In the reporting for calendar year 2004, under paragraph (b)(2)(vi) of this section, the \$5,000 credited to Student B's account is treated as a reimbursement or refund of qualified tuition and related expenses, because the charges for qualified tuition and related expenses were reduced by \$5,000. Under paragraph (b)(2)(iv) of this section, the \$5,000 reimbursement or refund of qualified tuition and related expenses must be separately reported on Form 1098-T because it relates to payments of qualified tuition and related expenses reported by College Y for 2003. Under paragraph (b)(2)(v) of this section, the \$5,000 positive account balance that is applied toward charges for the 2004 Fall semester is treated as a payment.

Therefore, College Y received total payments of \$11,000 during 2004 (the \$5,000 credit plus the \$6,000 payment). Under paragraph (b)(2)(v) of this section, the \$11,000 of total payments are treated as a payment of qualified tuition and related expenses up to the \$10,000 billed for such expenses. Therefore, for 2004, College Y is required to report \$10,000 of payments received for qualified tuition and related expenses during 2004 and a \$5,000 refund of payments of qualified tuition and related expenses reported for 2003.

(3) *Information reporting requirements for institutions that elect to report amounts billed for qualified tuition and related expenses*—(i) *In general.* Except as provided in paragraph (a)(2) of this section, an institution reporting amounts billed for qualified tuition and related expenses must file an information return on Form 1098-T with respect to each individual enrolled (as determined in paragraph (d)(1) of this section) for an academic period beginning during the calendar year or during a prior calendar year and for whom a transaction described in paragraphs (b)(3)(i)(C), (E), (F) or (G) of this section is made during the calendar year. An institution may use a substitute Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms (see § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An institution reporting amounts billed for qualified tuition and related expenses must include on Form 1098-T—

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

(B) The name, address, and TIN of the individual who is, or has been, enrolled by the institution;

(C) The amount billed for qualified tuition and related expenses with respect to the individual during the calendar year;

(D) An indication by the institution whether any amounts billed for qualified tuition and related expenses reported for the calendar year relate to an academic period that begins during the first three months of the next calendar year;

(E) The amount of any scholarships or grants for the payment of the individual's costs of attendance that the institution administered and processed during the calendar year;

(F) The amount of any reductions in charges made during the calendar year with respect to the individual that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year;

(G) The amount of any reductions to the amount of scholarships or grants for the payment of the individual's costs of attendance that were reported by the institution with respect to the individual for a prior calendar year;

(H) A statement or other indication showing whether the individual was enrolled for at least half of the normal full-time work load for the course of study the individual is pursuing for at least one academic period that begins during the calendar year (see section 25A and the regulations thereunder);

(I) A statement or other indication showing whether the individual was enrolled in a program leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential; and

(J) Any other information required by Form 1098-T and its instructions.

(iii) *Reportable amounts billed for qualified tuition and related expenses during calendar year determined.* The amount billed for qualified tuition and related expenses with respect to an individual during the calendar year that is reportable on Form 1098-T is determined by netting the amounts billed for qualified tuition and related expenses during the calendar year against any reductions in charges for qualified tuition and related expenses made during the calendar year that relate to amounts billed for qualified tuition and related expenses during the same calendar year.

(iv) *Separate reporting of reductions made to amounts billed for qualified tuition and related expenses that were reported for a prior calendar year.* An institution must separately report on Form 1098-T any reductions in charges made during the current calendar year that relate to amounts billed for qualified tuition and related expenses that were reported by the institution for a prior calendar year. Such reductions shall not be netted against amounts billed for qualified tuition and related expenses during the current calendar year.

(v) *Examples.* The following examples illustrate the rules in this paragraph (b)(3):

Example 1. (i) In early August 2003, University X bills enrolled Student A \$10,000 for qualified tuition and related expenses and \$6,000 for room and board for the 2003 Fall semester. In late August 2003, Student A pays \$11,000 to University X. In early September 2003, Student A drops to half-time enrollment for the 2003 Fall semester. In late September 2003, University X adjusts Student A's account and reduces the charges for qualified tuition and related expenses by \$5,000 to reflect half-time enrollment. In late September 2003,

University X applies the \$5,000 account balance toward current charges.

(ii) Under paragraph (b)(3)(iii) of this section, University X is required to net the \$10,000 amount of qualified tuition and related expenses billed during 2003 against the \$5,000 reduction in charges for qualified tuition and related expenses during 2003. Therefore, Institution X is required to report \$5,000 in amounts billed for qualified tuition and related expenses during 2003.

Example 2. (i) The facts are the same as in Example 1, except that, in addition, in early December 2003, College X bills Student A \$10,000 for qualified tuition and related expenses and \$6,000 for room and board for the 2004 Spring semester. In early January 2004, Student A pays \$16,000. In mid-January 2004, after the 2004 Spring semester classes begin, Student A drops to half-time enrollment. In mid-January 2004, College X credits \$5,000 to Student A's account, reflecting a \$5,000 reduction in charges for qualified tuition and related expenses, but does not issue a refund check to Student A. In early August 2004, College X bills Student A \$10,000 for qualified tuition and related expenses and \$6,000 for room and board for the 2004 Fall semester. In early September 2004, College X applies the \$5,000 positive account balance toward Student A's \$16,000 bill for the 2004 Fall semester. In late September 2004, Student A pays \$6,000 toward the charges.

(ii) In the reporting for calendar year 2003, under paragraph (b)(3)(iii) of this section, College X is required to report \$15,000 amounts billed for qualified tuition and related expenses during 2003 (\$5,000 for the 2003 Fall semester and \$10,000 for the 2004 Spring semester). In addition, College X is required to indicate that some of the amounts billed for qualified tuition and related expenses reported for 2003 relate to an academic period that begins during the first three months of the next calendar year.

(iii) In the reporting for calendar year 2004, under paragraph (b)(3)(iv) of this section, the \$5,000 reduction in charges for qualified tuition and related expenses must be separately reported on Form 1098-T because it relates to amounts billed for qualified tuition and related expenses that were reported by College X for 2003. Under paragraph (b)(3)(iii) of this section, College X is required to report \$10,000 in amounts billed for qualified tuition and related expenses during 2004.

(4) *Requirements for insurers*—(i) *In general.* Except as otherwise provided in this section, an insurer must file an information return for each individual with respect to whom reimbursements or refunds of qualified tuition and related expenses are made during the calendar year on Form 1098-T. An insurer may use a substitute Form 1098-T if the substitute form complies with applicable revenue procedures relating to substitute forms (see § 601.601(d)(2) of this chapter).

(ii) *Information included on return.* An insurer must include on Form 1098-T—

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

(B) The name, address, and TIN of the individual with respect to whom reimbursements or refunds of qualified tuition and related expenses were made;

(C) The aggregate amount of reimbursements or refunds of qualified tuition and related expenses that the insurer made with respect to the individual during the calendar year; and

(D) Any other information required by Form 1098-T and its instructions.

(5) *Time and place for filing return*—

(i) *In general.* Except as provided in paragraphs (b)(5)(ii) and (iii) of this section, Form 1098-T must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which payments were received, or amounts were billed, for qualified tuition or related expenses, or reimbursements, refunds, or reductions of such amounts were made. An institution or insurer must file Form 1098-T with the IRS according to the instructions to Form 1098-T.

(ii) *Return for nonresident alien individual.* In general, an institution or insurer is not required to file a return on behalf of a nonresident alien individual. However, if a nonresident alien individual requests an institution or insurer to report, the institution or insurer must file a return described in paragraph (b) of this section with the IRS on or before the date prescribed in paragraph (b)(5)(i) of this section, or on or before the thirtieth day after the request, whichever is later.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to file returns required in this section upon a showing of good cause. See General Instructions for Forms 1099 series, 1098 series, 5498 series, and W-2G, "Certain Gambling Winnings," and applicable revenue procedures for rules relating to extensions of time to file (see § 601.601(d)(2) of this chapter).

(6) *Use of magnetic media.* See section 6011(e) and § 301.6011-2 of this chapter for rules relating to the requirement to file Forms 1098-T on magnetic media.

(c) *Requirement to furnish statement*—(1) *In general.* An institution or insurer must furnish a statement to each individual for whom it is required to file a Form 1098-T. The statement must include—

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

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS;

(iii) Instructions that—

(A) State that the statement reports either total payments received by the institution for qualified tuition and related expenses during the calendar year, or total amounts billed by the institution for qualified tuition and related expenses during the calendar year, or the total reimbursements or refunds made by the insurer;

(B) State that, under section 25A and the regulations thereunder, the taxpayer may claim an education tax credit only with respect to qualified tuition and related expenses actually paid during the calendar year; and that the taxpayer may not be able to claim an education tax credit with respect to the entire amount of payments received, or amounts billed, for qualified tuition and related expenses reported for the calendar year;

(C) State that the amount of any scholarships or grants reported for the calendar year and other similar amounts not reported (because they are not administered and processed by the institution) may reduce the amount of any allowable education tax credit for the taxable year;

(D) State that the amount of any reimbursements or refunds of payments received, or reductions in charges, for qualified tuition and related expenses, or any reductions to the amount of scholarships or grants, reported by the institution with respect to the individual for a prior calendar year may affect the amount of any allowable education tax credit for the prior calendar year (and may result in an increase in tax liability for the year of the refund);

(E) State that the amount of any reimbursements or refunds of qualified tuition and related expenses reported by an insurer may reduce the amount of an allowable education tax credit for a taxable year (and may result in an increase in tax liability for the year of the refund);

(F) State that the taxpayer should refer to relevant IRS forms and publications, and should not refer to the institution or the insurer, for explanations relating to the eligibility requirements for, and calculation of, any allowable education tax credit; and

(G) Include the name, address, and phone number of the information contact of the institution or insurer that filed the Form 1098-T.

(2) *Time and manner for furnishing statement*—(i) *In general.* Except as provided in paragraphs (c)(2)(ii) and (iii) of this section, an institution or insurer must furnish the statement described in paragraph (c)(1) of this section to each individual for whom it is required to file a return, on or before January 31 of the

year following the calendar year in which payments were received, or amounts were billed, for qualified tuition and related expenses, or reimbursements, refunds, or reductions of such amounts were made. If mailed, the statement must be sent to the individual's permanent address, or the individual's temporary address if the institution or insurer does not know the individual's permanent address. If furnished electronically, the statement must be furnished in accordance with the applicable regulations.

(ii) *Statement to nonresident alien individual.* If an information return is filed for a nonresident alien individual, the institution or insurer must furnish a statement described in paragraph (c)(1) of this section to the individual in the manner prescribed in paragraph (c)(2)(i) of this section. The statement must be furnished on or before the later of the date prescribed in paragraph (c)(2)(i) of this section or the thirtieth day after the nonresident alien's request to report.

(iii) *Extensions of time.* The IRS may grant an institution or insurer an extension of time to furnish the statements required in this section upon a showing of good cause. See General Instructions for Forms 1099 series, 1098 series, 5498 series, and W-2G, "Certain Gambling Winnings," and applicable revenue procedures for rules relating to extensions of time to furnish statements (see § 601.601(d)(2) of this chapter).

(3) *Copy of Form 1098-T.* An institution or insurer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1098-T and its instructions or another document that contains all of the information filed with the IRS and the information required by paragraph (c)(1) of this section if the document complies with applicable revenue procedures relating to substitute statements (see § 601.601(d)(2) of this chapter).

(d) *Special rules—(1) Enrollment determined.* An institution may determine its enrollment for each academic period under its own rules and policies for determining enrollment or as of any of the following dates—

(i) 30 days after the first day of the academic period;

(ii) A date during the academic period on which enrollment data must be collected for purposes of the Integrated Post Secondary Education Data System administered by the Department of Education; or

(iii) A date during the academic period on which the institution must report enrollment data to the State, the institution's governing body, or some other external governing body.

(2) *Payments of qualified tuition and related expenses received or collected by one or more persons—(i) In general.* Except as otherwise provided in paragraph (d)(2)(ii) of this section, if a person collects or receives payments of qualified tuition and related expenses on behalf of another person (e.g., an institution), the person collecting or receiving payments must satisfy the requirements of paragraphs (b) and (c) of this section. In this case, those requirements do not apply to the transfer of the payments to the institution.

(ii) *Exception.* If the person collecting or receiving payments of qualified tuition and related expenses on behalf of another person (e.g., an institution) does not possess the information needed to comply with the requirements of paragraphs (b) and (c) of this section, the other person must satisfy those requirements.

(3) *Governmental units.* An institution or insurer that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the requirements of paragraphs (b) and (c) of this section and an appropriately designated officer or employee of the governmental entity must satisfy those requirements.

(e) *Penalty provisions—(1) Failure to file correct returns.* The section 6721 penalty may apply to an institution or insurer that fails to file information returns required by section 6050S and this section on or before the required filing date; that fails to include all of the required information on the return; or that includes incorrect information on the return. See section 6721, and the regulations thereunder, for rules relating to penalties for failure to file correct returns. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(2) *Failure to furnish correct information statements.* The section 6722 penalty may apply to an institution or insurer that fails to furnish statements required by section 6050S and this section on or before the prescribed date; that fails to include all the required information on the statement; or that includes incorrect information on the statement. See section 6722, and the regulations thereunder, for rules relating to penalties for failure to furnish correct statements. See section 6724, and the regulations thereunder, for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Waiver of penalties for failures to include a correct TIN—(i) In general.* In the case of a failure to include a correct

TIN on Form 1098-T or a related information statement, penalties may be waived if the failure is due to reasonable cause. Reasonable cause may be established if the failure arose from events beyond the institution's or insurer's control, such as a failure of the individual to furnish a correct TIN. However, the institution or insurer must establish that it acted in a responsible manner both before and after the failure.

(ii) *Acting in a responsible manner.* An institution or insurer must request the TIN of each individual for whom it is required to file a return if it does not already have a record of the individual's correct TIN. If the institution or insurer does not have a record of the individual's correct TIN, then it must solicit the TIN in the manner described in paragraph (e)(3)(iii) of this section on or before December 31 of each year during which it receives payments, or bills amounts, for qualified tuition and related expenses or makes reimbursements, refunds, or reductions of such amounts with respect to the individual. If an individual refuses to provide his or her TIN upon request, the institution or insurer must file the return and furnish the statement required by this section without the individual's TIN, but with all other required information. The specific solicitation requirements of paragraph (e)(3)(iii) of this section apply in lieu of the solicitation requirements of § 301.6724-1(e) and (f) of this chapter for the purpose of determining whether an institution or insurer acted in a responsible manner in attempting to obtain a correct TIN. An institution or insurer that complies with the requirements of this paragraph (e)(3) will be considered to have acted in a responsible manner within the meaning of § 301.6724-1(d) of this chapter with respect to any failure to include the correct TIN of an individual on a return or statement required by section 6050S and this section.

(iii) *Manner of soliciting TIN.* An institution or insurer must request the individual's TIN in writing and must clearly notify the individual that the law requires the individual to furnish a TIN so that it may be included on an information return filed by the institution or insurer. A request for a TIN made on Form W-9S, "Request for Student's or Borrower's Taxpayer Identification Number and Certification," satisfies the requirements of this paragraph (e)(3)(iii). An institution or insurer may establish a system for individuals to submit Forms W-9S electronically as described in applicable forms and instructions. An institution or insurer may also develop

a separate form to request the individual's TIN or incorporate the request into other forms customarily used by the institution or insurer, such as admission or enrollment forms or financial aid applications.

(4) *Failure to furnish TIN.* The section 6723 penalty may apply to any individual who is required (but fails) to furnish his or her TIN to an institution or insurer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) *Effective date.* The rules in this section apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

PART 301—PROCEDURE AND ADMINISTRATION

4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

5. Section 301.6011-2 is amended as follows:

1. In paragraph (b)(1), first sentence, add the language "1098-T," immediately after the language "1098-E,".

2. Revise paragraph (g)(3).

The revision reads as follows:

§ 301.6011-2 Required use of magnetic media.

* * * * *

(g) * * *

(3) This section applies to returns on Forms 1098-E, "Student Loan Interest Statement," and 1098-T, "Tuition Statement," filed after December 31, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

7. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current Control OMB No.
* * * * *	*
David A. Mader, <i>Assistant Deputy Commissioner—Internal Revenue.</i>	
Approved: December 12, 2002.	
Pamela F. Olson, <i>Assistant Secretary of the Treasury.</i>	
[FR Doc. 02-31915 Filed 12-18-02; 8:45 am]	
BILLING CODE 4830-01-P	

CFR part or section where identified and described	Current Control OMB No.
* * * * *	*
1.6050S-1	1545-1678