

Part III. Administrative, Procedural, and Miscellaneous

Qualified State Tuition Programs

Notice 96-58

This notice provides guidance regarding certain reporting requirements and the transition rules applicable to “qualified State tuition programs” described in § 529 of the Internal Revenue Code, recently enacted by section 1806 of the Small Business Job Protection Act, Pub. L. 104-188 (the “Act”). The notice also solicits comments from the public on section 529.

Section 529 provides tax-exempt status to “qualified State tuition programs,” meaning programs established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary entitling the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary, or (2) contribute to an account established for the sole purpose of meeting qualified higher education expenses of the designated beneficiary of the account.

Under § 529, qualified State tuition programs also must meet requirements relating to contributions, refunds, and maintenance of separate accounts for each designated beneficiary of the program. In addition, the program must prohibit investment direction by contributors or beneficiaries, the pledge or assignment of any interest in the program as security for a loan, and excess contributions.

In general, § 529 is effective for taxable years ending after August 20, 1996, the date of enactment. However, the Act includes a transition rule providing that if

(1) a State maintains (on the date of enactment) a program under which persons may purchase tuition credits on behalf of, or make contributions for educational expenses of, a designated beneficiary, and (2) such program meets the requirements of a qualified State tuition program before the later of (a) one year after the date of enactment, or (b) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after the date of enactment, then the provisions of the...[Act] will apply to contributions (and earnings allocable thereto) made before the date the program meets the requirements of a

qualified State tuition program, without regard to whether the requirements of a qualified State tuition program are satisfied with respect to such contributions and earnings. . . . H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 282 (1996). (Conference Report). The Internal Revenue Service will not assert income tax liability against a State tuition program for any period before the program meets the requirements of § 529 if the program qualifies for the transition rule.

Section 529(c)(3)(A) and (B) provides that any distribution made by or benefit furnished in-kind under a qualified State tuition program shall be includible in the gross income of the distributee in the manner as provided under § 72, to the extent not excluded from gross income under any other provision.

Section 529(d) authorizes the Internal Revenue Service to require qualified State tuition programs to file information reports for education furnished to beneficiaries or distributions made to individuals during any calendar year. Any reporting requirements promulgated under § 529(d) would apply in lieu of any other reporting requirement for a program that may apply with respect to information returns or payee statements on distributions.

The Internal Revenue Service is currently developing reporting requirements under § 529(d). However, because this legislation was enacted late in the year and because States are expected to need time to implement appropriate record-keeping, reporting will not be required for any distribution made by, or benefit furnished in-kind under, a qualified State tuition program prior to 1998. In addition, the Internal Revenue Service will not assess penalties against plan administrators who do not file information returns or provide payee statements on distributions made during 1997 and prior years.

Comments on Future Guidance Invited

The Internal Revenue Service invites comments on § 529, including the requirements for reporting distributions made by qualified State tuition programs, the requirements for qualification and operation of these programs, and the treatment for federal tax purposes of distributions made by these programs. These comments will be considered in drafting future guidance. Please send

written comments by December 31, 1996, to: CC:DOM:CORP:R (Notice 96-58), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 96-58), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

For further information concerning this notice contact Monice Rosenbaum of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6070 (not a toll free call).

Interim Guidance on Sections 877, 1494, 6039F, and 6048

Notice 96-60

This notice provides guidance for taxpayers affected by the penalty provision of section 1494 and the filing requirements of section 6048(a) of the Internal Revenue Code (“Code”), as amended by the Small Business Job Protection Act of 1996 (“SBJPA”). This notice also provides guidance for taxpayers affected by the ruling request provision of section 877 of the Code, as amended by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the information reporting requirements of section 6039F of the Code, as added by HIPAA.¹

BACKGROUND

Section 877, as amended by HIPAA, generally provides that a former U.S. citizen who renounces his citizenship after February 5, 1995, or a former long-term lawful permanent resident who ceases to be taxed as a lawful permanent resident after that date, who had as a principal purpose for such renunciation or cessation the avoidance of U.S. taxes, will be taxed on all of his U.S. source income for the succeeding 10-year period. An individual who meets a tax liability or net worth test is

¹There are currently two provisions of the Code designated as section 6039F. The Service intends to seek a technical correction to HIPAA to redesignate section 6039F of the Code, as added by HIPAA, as section 6039G.

considered to be tax motivated. A former citizen who satisfies certain criteria will not be subject to these tests if he submits a ruling request within one year of renunciation of U.S. citizenship for a determination by the Secretary as to whether such renunciation had as one of its principal purposes the avoidance of U.S. taxes. However, the statute provides that in no event will this one-year period expire before November 19, 1996 (the date that is 90 days after the enactment of HIPAA).

Section 6039F, as added by HIPAA, requires each individual who relinquishes U.S. citizenship after February 5, 1995, to provide an information statement to the U.S. Department of State, a diplomatic or consular officer of the United States, or a federal court at the time of expatriation. Any individual who ceases to be taxed as a lawful permanent resident after February 5, 1995, must provide a similar information statement with his U.S. tax return for that year. However, the statute provides that in no event will this information statement be required to be filed before November 19, 1996.

Section 1491 generally imposes an excise tax on the transfer of property by a U.S. person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership. Current regulations under section 1494 require a U.S. transferor to file a return on the date such a transfer is made. Section 1494(c), as added by SBJPA, imposes a penalty for the failure to file a required return with respect to any transfer described in section 1491 that occurs after August 20, 1996 (the date of enactment of SBJPA).

Section 6048(a), as amended by SBJPA, generally requires any U.S. person who transfers property to a foreign trust after August 20, 1996, to file an information return. The statute provides that this return must be filed no later than 90 days after the transfer (or such later date as the Secretary may prescribe).

INTERIM GUIDANCE

The Service intends to issue detailed guidance in these areas before the end of 1996. The forthcoming guidance will not require the submission of a ruling request under section 777, an information statement under section 6039F, or an information return under section 6048(a) before a date that is at least 60

days after the issuance of that guidance. Any such ruling request, information statement, or information return submitted within the time period set forth in the forthcoming guidance will be considered filed in a timely manner. In addition, no penalty will be imposed under section 1494(c) if a return required with respect to a section 1491 transfer is filed no later than 60 days after the issuance of the forthcoming guidance (or such later date specified in that guidance).

The principal author of this notice is Michael Kirsch of the Office of the Associate Chief Counsel (International). For further information regarding sections 777 or 6039F, contact Michael Kirsch or Trina Dang, for information regarding section 1494 contact Wendy Stanley, and for information regarding section 6048 contact Leslie Cracraft. Each of these individuals may be reached at (202) 622-3860 (not a toll-free call).

Information Reporting for Discharges of Indebtedness: Waiver of Penalties in Certain Circumstances for Foreign Financial Entities

Notice 96-61

This notice extends the scope of the penalty relief granted in the preamble to the final Income Tax Regulations under § 6050P of the Internal Revenue Code relating to the reporting of discharges of indebtedness (61 F.R. 262, January 4, 1996).

Section 6050P requires an information return to be filed by an applicable entity, including an applicable financial entity, which discharges the indebtedness of any person if the amount discharged is \$600 or more. Section 6050P(c)(2) provides that an applicable financial entity includes any financial institution described in § 581 or 591(a), any credit union, and any other corporation which is a direct or indirect subsidiary of such entity but only if, by virtue of being affiliated with the entity, the corporation is subject to supervision and examination by a Federal or State agency which regulates such other entities.

Section 1.6050P-1(d) of the regulations provides certain exceptions from the reporting requirements. Section 1.6050P-1(d)(4) reserves guidance as to the circumstances under which the reporting requirements will not apply to the discharge of indebtedness of foreign

debtors held by foreign branches of U.S. financial institutions. Section 1.6050P-1(d)(4)(ii) identifies the criteria that must be met in order to treat indebtedness held by a foreign branch of a U.S. financial institution as being within the scope of the reserved guidance.

The preamble to the final regulations states, in part, that “the IRS and Treasury are continuing to study the issue of whether reporting is necessary in the case of foreign debtors whose debt is discharged by foreign branches of U.S. financial institutions. Accordingly, pending the issuance of further guidance, no penalties will be imposed if an applicable financial entity fails to report a discharge of indebtedness of a foreign debtor by a foreign branch of the entity.”

After issuance of the final regulations, commentators requested that the penalty relief described in the preamble to the final regulations also apply to indebtedness held by foreign offices or branches of foreign financial institutions that are applicable financial entities under § 6050P(c)(2)(C).

The Internal Revenue Service has determined that, pending the issuance of further guidance, the relief granted in the preamble should be extended, as suggested by commentators. To accomplish this, the regulations will be amended to delete the word “U.S.” from the heading of § 1.6050P-1(d)(4) and the introductory text in § 1.6050P-1(d)(4)(ii). Furthermore, no penalties will be imposed if a foreign office or branch of a foreign applicable financial entity fails to report a discharge of indebtedness of a foreign debtor described in § 1.6050P-1(d)(4)(ii) after giving effect to the preceding sentence.

The principal author of this notice is Sharon Hall of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Hall on (202)622-4930 (not a toll-free call).

Logos and Identifying Slogans on Substitute Forms 1099

Notice 96-62

This notice informs payors who are required to report certain payments on Form 1099 that the Service intends to issue regulations permitting these payors to use certain logos and identifying slogans on substitute Forms 1099 required to be furnished to payees after