

(f) *Effective date.* This section applies to cash received by court clerks on or after February 13, 1995.

[T.D. 8652, 61 FR 7, Jan. 2, 1996]

**§ 1.6050J-1T Questions and answers concerning information returns relating to foreclosures and abandonments of security (temporary).**

The following questions and answers relate to the requirement of reporting foreclosures and abandonments of security under section 6050J of the Internal Revenue Code Act of 1954, as added by section 148 of the Tax Reform Act of 1984 (98 Stat. 687).

REQUIREMENT OF REPORTING

*In General*

**Q-1:** What does section 6050J provide with respect to the reporting of acquisitions and abandonments of property that secures indebtedness?

**A-1:** Section 6050J provides that an information return must be made by any person who, in connection with a trade or business conducted by the person (except as provided in A-13), lends money and, in full or partial satisfaction of the debt, acquires an interest in any property that is security for the debt, or has reason to know that the property has been abandoned. For purposes of these questions and answers, a person who lends money in connection with a trade or business is referred to as a "lender".

*Trade or Business Requirement*

**Q-2:** Must a person be in the trade or business of lending money in order to be subject to the reporting requirement of this section?

**A-2:** No. A person does not have to be in the trade or business of lending money to be subject to this reporting requirement. Thus, if L sells automobiles and lends money to B to enable B to purchase an automobile from L for use in B's trade or business, and that automobile is security for the loan, L would be subject to this reporting requirement. Similarly, if P promotes interests in an oil well, and lends money to I to enable I to invest in the oil well which is security for the loan, P would be subject to this reporting requirement.

**Q-3:** How does the reporting requirement apply in the case of pools, fixed investment trusts, or other similar arrangements through which undivided beneficial interests or participations in indebtedness are offered?

**A-3:** In these cases, the owners of the undivided beneficial interests or participations are not subject to this reporting requirement. Instead, the trustee, record owner, or person acting in a similar capacity is treated

as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to each loan or other evidence of indebtedness. For situations when more than one return or statement must be filed, see A-29, A-31, and A-41. The trustee, record owner, or person acting in a similar capacity, rather than the owners of beneficial interests or participations, is subject to the applicable penalty provisions (see A-43).

**Q-4:** How does the reporting requirement apply in the case of corporate, tax-exempt, or other bond issues?

**A-4:** In these cases, the owners or holders of a bond issue are not required to report. Instead, the trustee or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to a bond issue. For situations when more than one return or statement must be filed, see A-29, A-31, and A-41. The trustee or person acting in a similar capacity, rather than the owners or holders of a bond issue, is subject to the applicable penalty provisions (see A-43).

*Property Subject to Reporting*

**Q-5:** Does the reporting requirement apply to all types of property securing indebtedness?

**A-5:** No. The reporting requirement does not apply to any loan made to an individual and secured by an interest in tangible personal property which is neither held for investment nor used in a trade or business. For rules governing when the reporting requirement applies to tangible personal property of a type ordinarily used for personal purposes, see A-8.

**Q-6:** Does the reporting requirement apply when property securing indebtedness is held both for personal use and for use in a trade or business?

**A-6:** Yes. The reporting requirement applies when property securing indebtedness is held both for personal use and for use in a trade or business. Similarly, the reporting requirement applies when the borrower holds such property both for personal use and for investment purposes.

**Q-7:** Does the reporting requirement apply to indebtedness secured by a personal residence?

**A-7:** Yes. A lender is subject to the reporting requirement if the property that is security for the loan is real property, including a personal residence, whether or not held for investment or used in a trade or business.

**Q-8:** In the case of a loan made to an individual and secured by personal property of a

type that is ordinarily used for personal purposes, how does a lender know whether such property is used in a trade or business or held for investment purposes?

A-8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, such as an automobile, computer, or boat, the lender is subject to the reporting requirement if the lender knows that the property will be used in a trade or business or held for investment purposes. For this purpose, a lender knows information if the information is included on the books and records of the lender or its agents pertaining to the loan, or is known by the lender or agent's officers, partners, principals or employees, but only if such information was acquired in the course of their ordinary business activities on behalf of the lender. For example, if a borrower indicates on the loan agreement or disclosure statement that the borrower intends to use the property securing the loan in the borrower's trade or business, the lender is subject to this reporting requirement. Similarly, if the borrower notifies the lender that the borrower intends to convert the property from personal use to use in a trade or business, the lender is subject to the reporting requirement.

Q-9: If a lender maintains a system under which the lender classifies loans according to the use of property that secures the loan (such as use in a trade or business or personal use), may the lender rely on this system in determining whether the reporting requirement applies?

A-9: Yes. A lender may rely on the classification system to determine whether the reporting requirement applies, provided that the classification system is designed and reasonably maintained to ensure accuracy in identifying the use of property.

#### *Acquisition of an Interest*

Q-10: For purposes of the reporting requirement, when is a lender treated as acquiring an interest in property that is security for indebtedness?

A-10: In general, an interest in property is acquired on the earlier of the date title is transferred to the lender or the date possession and the burdens and benefits of ownership are transferred to the lender. If State or other applicable law provides for an objection period within which the borrower and other appropriate parties may object to the lender's proposal to retain the property in satisfaction of the indebtedness, a lender is treated as acquiring an interest in the property on the date this objection period expires. If the lender purchases the property at a sale held to satisfy the indebtedness, such as at a foreclosure or execution sale, the lender is treated as acquiring an interest in the property on the later of the date of the sale or the date the borrower's right of re-

demption, if any, expires. See 4A-15 for rules governing reporting when a party other than the lender acquires property securing indebtedness at a foreclosure, execution or similar sale.

Q-11: If a lender takes possession of property that is security for a loan for a limited purpose, such as completing construction on or improvement to the property, is the lender treated as having acquired an interest in the property at that point?

A-11: No. The lender in these circumstances is not treated as acquiring an interest in the property. However, the lender must report if he later acquires an interest in the property in full or partial satisfaction of the indebtedness (see A-10 or A-15).

#### *Indirect Acquisition*

Q-12: If a lender acquires an interest in a partnership, trust, or other entity in full or partial satisfaction of a loan that is secured by the assets or property owned by the partnership, trust, or other entity, is the lender treated as acquiring an interest in the property securing the loan?

A-12: Yes. A lender in this case acquires an interest in the underlying assets or property and the reporting requirements of this section apply to the acquisition of that interest in a partnership, trust, or other entity.

#### *Treatment of Governmental Units*

Q-13: How does the reporting requirement apply to a governmental unit?

A-13: A governmental unit (or any agency or instrumentality thereof) which lends money secured by property is subject to the reporting requirement without regard to the requirement that the money be lent in connection with a trade or business. A governmental unit (or any agency or instrumentality thereof) subject to the reporting requirement must designate an officer or employee to make the return. The officer or employee appropriately designated must make the return in the form and manner prescribed by this section.

#### *Notification of Sale Under Section 7425(b)*

Q-14: Does a return filed as required under this section constitute a notification of sale under section 7425(b)?

A-14: No. A return filed under this section is not considered a notification of sale under section 7425(b).

#### *Sale to Third Party*

Q-15: If a party other than the lender purchases property securing a loan at a foreclosure, execution, or similar sale, must the lender report under this section?

A-15: Yes. The lender must report if a party other than the lender purchases property securing the lender's loan at a foreclosure, execution, or similar sale. If the proceeds of that sale are applied to satisfy all or any portion of the lender's loan, the lender must treat the property as having been abandoned. The lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A-19). If no proceeds of such a sale are made available to satisfy any portion of the lender's loan but the lender's security interest foreclosed upon is terminated, reduced, or otherwise impaired by reason of the sale, the lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A-19).

*Treatment of Foreign Borrowers*

Q-16: How does the reporting requirement apply in the case of foreign borrowers where the property securing the loan is located outside the United States?

A-16: No reporting is required where both of the following requirements are met: (a) The property securing the loan is located outside the United States, and (b) at any time before the lender is required to report, the borrower furnishes the lender with a statement, signed upon penalty of perjury, that he is an exempt foreign person (unless an employee or other agent of the lender who is responsible for receiving or reviewing these statements has actual knowledge that the statement is incorrect). For purposes of this section, the borrower is an exempt foreign person if he:

(1) Is not a citizen of the United States, a resident of the United States, a person treated as a resident of the United States by reason of an election under section 6013 (g) or (h) or a United States corporation or other United States entity;

(2) Is not subject to the provisions of section 877; and

(3) At the time the statement is furnished, is not, or reasonably expects not to be, engaged in a trade or business in the United States during the current year in connection with the loan or property securing the loan.

If, after providing the statement, the borrower ceases to be an exempt foreign person, he must so notify the lender in writing within 30 days of this change in status. If the lender is so notified, this exemption from the reporting requirement no longer applies.

*Abandonments*

Q-17: For purposes of this reporting requirement, when has an abandonment occurred?

A-17: An abandonment has occurred when the objective facts and circumstances indicate that the borrower intended to and has

permanently discarded the property from use.

Q-18: Does the fact that a lender knows or has reason to know of an abandonment of property securing a loan mean that the borrower is entitled to an abandonment loss?

A-18: No. The definition of an abandonment of property securing a loan in A-17 applies only for purposes of this reporting requirement and is not intended to apply for other purposes, such as determining whether a borrower would be entitled to an abandonment loss.

Q-19: Under what circumstances will a lender be considered to have reason to know that property which is security for a loan has been abandoned?

A-19: Whether a lender has reason to know that property which is security for a loan has been abandoned is to be determined with reference to all the facts and circumstances concerning the status of the property. When the lender in the ordinary course of business becomes aware or should become aware of circumstances indicating that the property has been abandoned, the lender will be deemed to know all the information that would have been discovered through a reasonable inquiry. For example, if a borrower has failed (without adequate explanation) to make payments on the loan for a substantial period, the lender must make a reasonable inquiry to determine whether there has been an abandonment. If a reasonable inquiry would reveal objective facts and circumstances indicating that the borrower intended to and has permanently discarded the property from use, then the lender has reason to know that the property has been abandoned. If a lender knows or has reason to know that the property has been abandoned and reasonably expects to commence foreclosure, execution sale, or similar proceedings, see A-20.

Q-20: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale, or similar proceedings, is reporting of the abandonment required?

A-20: In these circumstances, the lender need not report as of the date he knows or has reason to know that the property has been abandoned. Instead, the lender must report as of the date he acquires an interest in the property or a third party purchases the property at a foreclosure, execution or similar sale (see A-10 and A-15). In any other case, the lender must report as of the date the lender knows or has reason to know that the property has been abandoned (see A-18).

Q-21: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale or similar proceedings but in fact does not commence such proceedings within

the three month period, must the lender report?

A-21: Yes. In these circumstances, the lender's obligation to report the abandonment arises at the close of the three month period. For example, if on December 31, 1985, a lender first has reason to know that property securing his loan has been abandoned and reasonably expects to commence foreclosure proceedings within three months, the lender is not required to report as of December 31, 1985 (see A-20). However, if the lender does not in fact commence foreclosure proceedings by March 31, 1986, the lender's obligation to report arises on this date. The lender must provide information on the abandonment under A-27 as of the date the lender first had reason to know of the abandonment (December 31, 1985). The lender must file the return required under this section with the Internal Revenue Service on or before February 28, 1987, and furnish a statement to the borrower on or before January 31, 1987 (see A-33 and A-40).

#### *Subsequent Holder of a Loan*

Q-22: To whom does the reporting requirement apply when a person lends money secured by property and subsequently transfers his interest in the indebtedness to another person?

A-22: The subsequent holder of a loan is treated as the lender for purposes of this reporting requirement and is the party required to report with respect to events occurring after the date he acquires the loan. This rule applies to all subsequent holders of a secured loan, including governmental units or any agencies or instrumentalities thereof. For example, if the Federal National Mortgage Association purchases real property loans from a lender, it would be subject to the reporting requirement.

#### *Multiple Lenders*

Q-23: If more than one person lends money secured by the same property, and one lender forecloses upon or otherwise acquires an interest in the property, must the other lenders report under this section?

A-23: Yes. In these circumstances, other lenders must report if they know or have reason to know that the property securing their loans is foreclosed upon or otherwise acquired by another lender and the sale or other acquisition terminates, reduces, or otherwise impairs their security interests in the property (see A-15). For example, if there is a first and second mortgage on a building, and the second mortgagee knows or has reason to know that the first mortgagee has foreclosed upon the building, the second mortgagee is subject to the reporting requirement even if no part of the indebtedness owed to him is satisfied by the proceeds of the foreclosure sale. For a description of the

reporting requirement applicable to the first mortgagee, see A-10 and A-15.

Q-24: If more than one person lends money secured by property, and one lender knows or has reason to know that the property has been abandoned, must each lender report under this section?

A-24: No. Each lender is required to report only when he knows or has reason to know that property has been abandoned (see A-19).

### FORM AND MANNER OF RETURN

#### *Form of Return*

Q-25: What form shall be used to make a return required by section 6050J?

A-25: Except as provided in A-35, the return must be made on Forms 1096 and 1099. The person required to make the return, however, may prepare and use a form which contains provisions substantially similar with those of Forms 1096 and 1099 if the person complies with any revenue procedures relating to substitute Forms 1096 and 1099 in effect at that time.

#### *Information Included on Return*

Q-26: What information must be included on a return required by reason of an acquisition of an interest in property that is security for a loan?

A-26: The following information must be included on the return:

- (a) The name and address of the borrower with respect to the secured indebtedness;
- (b) The borrower's TIN, as defined in Section 7701(a);
- (c) A general description of the property in which an interest is acquired;
- (d) Whether the borrower is personally liable for repayment of the indebtedness;
- (e) The date on which the person acquired an interest in the property (see A-10 or A-15);
- (f) The amount of the indebtedness outstanding at the time the interest in property is acquired;
- (g) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time the interest is acquired;
- (h) The amount of the indebtedness satisfied by the acquisition; and
- (i) Any other information as may be required by Forms 1096 and 1099.

Q-27: What information must be included on a return required because a person knows or has reason to know that property which is security for a loan has been abandoned?

A-27: The following information must be included on the return:

- (a) The information required in A-26 (a), (b), and (d);
- (b) A general description of the property abandoned;
- (c) The date on which the person first knows or has reason to know that the property has been abandoned;

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(d) The amount of the indebtedness outstanding as of the date on which the person first knows or has reason to know that the property has been abandoned;

(e) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time of abandonment; and

(f) Any other information as may be required by Forms 1096 and 1099.

### *Partnership Borrower*

Q-28: If a borrower is a partnership, must the TIN of each partner be reported?

A-28: No. If a borrower is a partnership, only the TIN of the partnership must be reported.

### *Multiple Borrowers*

Q-29: If there is more than one borrower on a single secured loan, must a person required to report under this section make a return with respect to each borrower on the loan?

A-29: Yes. Generally, a separate return must be made with respect to each borrower on a secured loan. However, only one report is required if the lender knows that the borrowers hold property as tenants by the entirety or that the property is held as community property.

### *General Description of Property*

Q-30: What type of information constitutes a general description of the property?

A-30: A general description of the property consists of information that sufficiently identifies the property. In the case of real property, a general description consists of the property's address unless this information is not available or would not sufficiently identify the property, in which case a legal description (*i.e.*, section, lot, block) must be provided instead. A general description of personal property consists of the type, make and model (where applicable) of the property. For example, an automobile would be described as "Car—1983 Pontiac Firebird." However, in the case of a single loan secured by more than one piece of personal property, a general description consists of the type or category of the pieces acquired or abandoned. For example, if the security for a single loan is six desks and seven typewriters, a general description of the property would be "Office Equipment."

### *Multiple Acquisitions and Abandonments*

Q-31: Must each acquisition and abandonment that occurs in a taxable year be reported on a separate return?

A-31: Generally, each acquisition and abandonment required to be reported by a person for a taxable year must be reported on a separate return. However, in the case of a single loan secured by more than one piece of property, separate returns will not be required

when a person acquires an interest in, or knows or has reason to know of the abandonment of, more than one piece of property that is security for the single loan in a taxable year. Instead, the person shall make one return for all of the acquisitions and one return for all of the abandonments of property that are security for the loan for a taxable year.

### *Fair Market Value*

Q-32: In the case of a foreclosure, execution, or similar sale, what is the fair market value of the property for purposes of the reporting requirement?

A-32: In general, in the absence of clear and convincing evidence to the contrary, the proceeds of the foreclosure, execution, or similar sale will be considered the fair market value of the property for purposes of this reporting requirement.

### *Time for Filing*

Q-33: When must a person file the return or returns required by section 6050J with the Internal Revenue Service?

A-33: The return or returns must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

### *Place for Filing*

Q-34: Where must the return or returns be filed?

A-34: The return or returns must be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for the Form 1099 series.

### *Use of Magnetic Media*

Q-35: What rules apply with respect to the use of magnetic media?

A-35: Any return required under section 6050J must be filed on magnetic media to the extent required by section 6011(e). Any person not required by section 6011(e) to file returns under section 6050J on magnetic media may request permission to do so. See §1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

## REQUIREMENT OF FURNISHING STATEMENTS TO BORROWERS

### *In General*

Q-36: What statements must be furnished to borrowers?

A-36: Any person required to make an information return under section 6050J must

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furnish a statement to each borrower whose name is required to be set forth in a return filed with the Internal Revenue Service. For the date when the statement must be furnished, see A-40.

Q-37: Is the statement considered to be furnished to the borrower if it is mailed to the borrower at the borrower's last known address?

A-37: Yes.

### *Information Included on Statement*

Q-38: What information must be included on the statement?

A-38: The statement must include the following information:

(a) Except in the case where the return is made on behalf of a governmental unit (or any agency or instrumentality thereof), the name and address of the person required to make the information return;

(b) In the case where the return is made on behalf of a governmental unit or any agency or instrumentality thereof, the name and address of such unit, agency or instrumentality;

(c) The information required under A-26 or A-27, whichever is applicable; and

(d) A legend stating that the information is being reported to the Internal Revenue Service.

### *Copy of Form 1099 to Borrowers*

Q-39: May the requirement of furnishing a statement be met by furnishing a copy of the Form 1099 filed with respect to that borrower?

A-39: Yes. The requirement of furnishing a statement may be met by furnishing to the borrower a copy of the Form 1099 containing the same information filed with the Service with respect to that borrower, or a reasonable facsimile thereof, provided that the form or the reasonable facsimile bears a legend stating that the information is being reported to the Internal Revenue Service.

### *Time of Furnishing Statement*

Q-40: When is a statement required to be furnished to the borrower?

A-40: A statement is required to be furnished to the borrower on or before January 31 of the year following the calendar year in which the acquisition or abandonment of property occurs.

### *Multiple Borrowers*

Q-41: If a person required to report under this section must make an information return with respect to more than one borrower on a single loan, of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

A-41: Yes. A separate statement must be furnished to each borrower with respect to

which a separate return is required under section 6050J.

### *Extensions of Time*

Q-42: Are there any circumstances under which an extension of time may be granted with respect to the requirement of furnishing statements to borrowers?

A-42: Yes. Upon written application of the person required to report, the service center director may, for good cause shown, grant that person an additional period (not to exceed 30 days) in which to furnish statements under section 6050J with respect to any calendar year. The application for an extension must be addressed to the director of the service center with which the returns must be filed. The application must contain a concise statement of the reasons for requesting the extension in order to aid the service center director in determining the period of extension, if any, to be granted. The application must state at the top of the first page that it is made under section 1.6050J-1T and must be signed by the person required to report under section 6050J. In general, the application should be filed not earlier than September 30 of the year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property, and not later than January 15 of the following year.

### PENALTIES

Q-43: Are there penalties for failing to comply with the requirements of section 6050J and the regulations thereunder?

A-43: Yes. The penalty for failing to make any information return with respect to any borrower under section 6050J is provided in section 6652. The penalty for failing to furnish a statement to any borrower is provided in section 6678.

### EFFECTIVE DATE

Q-44: When is section 6050J effective?

A-44: Section 6050J is effective for acquisitions and abandonments of property after December 31, 1984.

(Approved by the Office of Management and Budget under control number 1545-0877)

(Secs. 6050J and 7805 of the Internal Revenue Code of 1954 (98 Stat. 687, 68A Stat. 917, 26 U.S.C. 6050J, 7805 respectively)

[T.D. 7971, 49 FR 34460, Aug. 31, 1984, as amended by T.D. 8895, 65 FR 50408, Aug. 18, 2000]

### **§ 1.6050K-1 Returns relating to sales or exchanges of certain partnership interests.**

(a) *Partnership return required*—(1) *In general.* Except as otherwise provided