



National Association of College and University Business Officers

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September 19, 2014

Ms. Karen Schiller  
Commissioner, Small Business/Self-Employed Division  
Internal Revenue Service

Mr. Bradley Bouton  
Director, Examination Policy  
Small Business/Self-Employed Division  
Internal Revenue Service

Dear Ms. Schiller and Mr. Bouton:

I am writing to request that the Internal Revenue Service stop issuing penalty notices to colleges and universities related to missing or inaccurate taxpayer identification numbers (TINs) on 2012 Forms 1098-T and take steps to rescind the notices that have been issued. The waves of notices IRS again began sending to institutions this August impose an unwarranted administrative burden on all affected parties, including the IRS. I also ask that you issue guidance to reinstate the Service's past practice of forbearance until a long-term solution has been identified and take steps now to establish policies and practices to address compliance concerns more efficiently.

The National Association of College and University Business Officers (NACUBO) is a membership organization representing more than 2,100 public and nonprofit colleges and universities across the United States. NACUBO's mission is to advance sound financial management and business practices of higher education institutions in fulfillment of their academic missions. Our members take their responsibilities for filing information returns seriously and strive to the best of their abilities to comply.

In the course of complying with the tuition reporting requirements, it is inevitable that colleges and universities will submit Forms 1098-T with incorrect TINs because they must rely on student input to obtain TINs and have no way to verify TINs prior to filing. By statute, TIN matching is unavailable to filers of 1098-Ts. Further, some students do not have, or choose not to provide, a TIN, but the institution is still required to file Forms 1098-T for these students. In this context, it is inappropriate to assert penalties on colleges and universities for filing Forms 1098-T with incorrect TINs.

The summer of 2013 was the first time the IRS began asserting penalties against a large number of colleges and universities for filing Forms 1098-T with incorrect TINs. These proposed penalties for the 2011 tax year generated unnecessary confusion for both the IRS and the regulated community.

NACUBO greatly appreciates the subsequent IRS decision to waive such penalties for the 2011 tax year. We are disappointed, however, that many schools have yet to receive official notice that their fines for 2011 have been waived, despite the fact that the IRS announced the blanket waiver months ago.

We also appreciate the inclusion of guidance under section 6050S of the Internal Revenue Code regarding information reporting on tuition and related expenses on the 2014-2015 Priority Guidance Plan. We are concerned, however, that many campuses have received penalty notices addressing the 2012 tax year despite NACUBO's understanding the IRS would not move forward with issuing penalty notices again this year for 2012. Given that Forms 1098-T for 2012 were all filed long before the proposed fine notices were issued for the 2011 tax year, and nothing has changed that should cause the IRS to come to a different outcome for 2012, it is unclear why the IRS is repeating the cycle this year. We strongly believe that penalties should be waived until a long-term solution has been identified.

## **Background**

Section 6050S of the Internal Revenue Code requires colleges and universities to report to the IRS, and to students, certain information on enrollment, tuition and related expenses, and scholarships related to claims for education deductions or credits. Form 1098-T is used for this purpose. It requires the college or university to identify the student by name, address, and TIN. The regulations at 26 CFR 1.6050S-1(e) allow for a waiver of penalties for filing Form 1098-T with a missing or incorrect TIN if the failure is due to reasonable cause (such as the student's failure to provide a correct TIN) and the institution acted in a responsible manner. Under the rules, an institution acts in a responsible manner if it solicits a TIN at least once a year from anyone with a missing or incorrect TIN.

Colleges and universities are not permitted to use IRS-approved TIN matching services to verify TINs reported on Form 1098-T. This is because the IRS generally may not disclose a taxpayer's name, TIN, or other return information under Section 6103. Although there is a limited exception under Section 3406 that enables payers of reportable payments subject to backup withholding to verify TINs with the IRS prior to filing, tuition reporting does not qualify for this exception. As a result, it would be a violation of taxpayer confidentiality under Section 6103 for the IRS to permit colleges and universities to use TIN matching for tuition reporting.

## **Campus Procedures**

Colleges and universities solicit student TINs at various times in a variety of different capacities: at admission, as part of the student financial aid application process, upon enrollment, and when hiring student employees, for example. Institutions also routinely solicit missing TINs using Forms W-9S or a substitute form to ensure accurate Form 1098-T reporting. Despite their best efforts, however, colleges are inevitably left with missing or inaccurate TINs for some students.

- **Name mismatches.** As noted above, institutions have no way to check if the name the student provided is the same as that on record with the Social Security Administration. Students may prefer to be known on campus by a different name, or may change their name through marriage or divorce without notifying the school.

- **Foreign students.** Some institutions have thousands of foreign students, many of whom receive no U.S. payments and have no need for a TIN. While the regulations at §1.6050S-1(a)(2) provide an exception for filing 1098-Ts for nonresident aliens, it is not easy for colleges and universities to identify them. Additionally, foreign students have the option of requesting a Form 1098-T from an institution, despite the overall exception to their reporting. If a foreign student were to request a Form 1098-T for a prior year, the IRS may assert late filing penalties against an institution which complied with the information reporting requirements. This would impose a considerable burden on schools with significant populations of foreign students
- **Other missing TINs.** Institutions routinely pull TINs received and verified through other processes into the student information system used to generate 1098-Ts. But only about half of students apply for financial aid and only a small percentage have on-campus jobs at most schools. Some students, for various reasons, simply refuse to provide a TIN to their school. Colleges and universities cannot compel students to provide TINs by withholding services—much less compel students to provide accurate TINs.

## Recommendations

It is manifestly unfair to penalize colleges and universities for erroneous information that is beyond their control and which they cannot independently verify. Compliance processes that force colleges and universities, and the IRS, to repeat an endless annual cycle of proposed fines, waiver requests, notices of delayed response, and eventually confirmation of waivers is bureaucracy at its worst.

1. The IRS should cease sending 972CG notices for 2012 Forms 1098-T immediately and take steps to rescind the notices that have been issued. Beginning another cycle of waiver requests from hundreds of colleges and universities that the IRS lacks the capacity to process imposes unwarranted strain on already scarce campus and IRS resources.
2. The IRS should issue new guidance to reinstate its past practice of forbearance until a long-term solution has been identified. Until 2013, the IRS's longstanding policy had been *not* to assert penalties against colleges and universities for incorrect TINs on Form 1098-T.
3. The IRS should revise the process used to file Forms 1098-T with the IRS to allow the filing organization to affirmatively certify that it has "acted in a responsible manner" and met the standards for soliciting TINs from its students.
4. The IRS should revise its regulations at §1.6050S-1 to allow higher education institutions to *not* file a 1098-T for students who fail to provide a TIN. Institutions could be required to notify such students that they will not receive a form unless they provide a TIN by a certain date.

NACUBO again thanks the Service for issuing the blanket waiver for the 2011 penalties and we are hopeful that a similar action will be taken quickly with regard to 2012 penalties. We would welcome the opportunity to meet with you in person or by telephone to address to any questions

or concerns you may have and stand ready to help the IRS in any way we can to help move forward on these recommendations. Please contact NACUBO staff Anne Gross, vice president for regulatory affairs, at 202-861-2544, [anne.gross@nacubo.org](mailto:anne.gross@nacubo.org) or Mary Bachinger, director of tax policy, at 202-861-2581, [mary.bachinger@nacubo.org](mailto:mary.bachinger@nacubo.org). We appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Walda". The signature is fluid and cursive, with a large loop at the beginning and a long tail.

John D. Walda  
President and Chief Executive Officer

cc:

The Honorable Mark Mazur  
Assistant Secretary for Tax Policy  
Department of the Treasury

The Honorable Nina E. Olson  
National Taxpayer Advocate  
Taxpayer Advocate Service

The Honorable William J. Wilkins  
Chief Counsel  
Internal Revenue Service

Sunita B. Lough  
Commissioner, Tax Exempt and Government Entities Division  
Internal Revenue Service

Janet McCubbin  
Director, Individual Tax Analysis  
U.S. Department of the Treasury