



January 21, 2016

William J. Wilkins
Chief Counsel

Blaise G. Dusenberry
Senior Technical Reviewer (Procedure & Administration)

Office of Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Wilkins and Ms. Dusenberry:

I am writing to request immediate interim guidance confirming that the IRS will delay implementation of changes to tuition reporting methodology on Form 1098-T, through the elimination of Box 2, until after the publication of the corresponding item on the Priority Guidance Plan for the following reasons:

- In order for the vast majority of campuses that currently report in Box 2 to collect data to meet the new reporting requirement, they would have needed to have new software account tracking systems in place as of January 1 this year. Software providers are working on the necessary modifications and/or customizations to computer systems, but they are not yet available to colleges and universities. Filing institutions are not aware of when they will become available and the requisite systems changes then implemented. There is not enough time for these hundreds of colleges and universities to convert existing data collection and tuition reporting systems for the 2016 year as it is already well underway.
- Any new tuition reporting systems should be designed and implemented only after the IRS has published the Priority Guidance Plan project, revised Form 1098-T and instructions.

Given that the Priority Guidance Plan project will not be issued for some time, it would be counterproductive to enforce compliance with a rule for which guidance does not yet exist.

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Background. For more than a decade, colleges and universities have had the option of reporting either the aggregate amount billed for qualified tuition and related expenses (Box 2 on Form 1098-T) or payments received for qualified tuition and related expenses (Box 1 on Form 1098-T). Most institutions have opted to report amounts billed (Box 2) rather than payments received (Box 1) because Box 1 reporting is extremely difficult—if not impossible—to perform accurately for the following reasons:

- Box 1 reporting requires the filing institution to distinguish payments for qualified tuition and related expenses from payments for nonqualified payments such as room, board, and living

expenses, yet students do not include any information with their payments about what expense the payment is intended to cover.

- Financial aid awarded to a student after the student has paid the filing institution may retroactively affect whether the payment is applied to a qualified or nonqualified expense. Making matters more complicated is the fact that financial aid may be awarded in a different calendar year from the year of the payment.

Barely a month ago, on December 18, 2015, the Consolidated Appropriations Act of 2016 became law. Section 212 of that legislation amended 6050S(b)(2)(B)(i) of the Internal Revenue Code by striking “or the aggregate amount billed.” The amendment applies “to expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date.”

The effect of the legislation is to eliminate the option of reporting amounts billed for qualified expenses in Box 2, thereby making it necessary for the IRS to issue guidance that clarifies for colleges and universities the numerous uncertainties related to transitioning from Box 2 to Box 1 reporting.

Fortunately, the Priority Guidance Plan already has announced a guidance project in this area because, earlier in 2015, Congress enacted the Trade Preferences Extension Act which also affects Form 1098-T. See 2015-2016 Priority Guidance Plan, Tax Administration, Item 6 (“Guidance under §§25A, 6050S, and 6724(f) relating to changes made by sections 804 and 805 of the Trade Preferences Extension Act of 2015 regarding education tax credits and related information reporting.”). The guidance project should be expanded to address the concerns raised above with respect to Box 1 reporting.

My staff are working with a group of campus officials responsible for Form 1098-T tax reporting and are drafting a second letter highlighting specific areas that should be clarified in future guidance. For example, such guidance will need to explain how colleges and universities should distinguish payments received for qualified tuition and related expenses from payments received for nonqualified expenses. It should also explain how to reconcile payments received for expenses in different calendar years or how scholarships and financial aid affects the determination of whether a payment is for a qualified or nonqualified expense. Campuses will also need guidance on crossover issues related to transitioning from Box 2 to Box 1 reporting.

Request. There is ample precedent for IRS to delay the implementation of a statutory change when the change requires administrative guidance and changes to existing forms and procedures. For example, the IRS issued Announcement 2016-3 on January 7, 2016, stating that it would waive penalties for Forms 1098-T with missing or inaccurate taxpayer identification numbers the 2015 tax year for the following reasons:

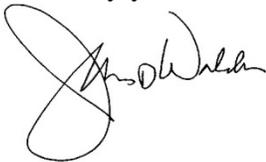
The IRS is unable to make necessary programming and form changes to implement section 6724(f) with respect to Forms 1098-T for the 2015 calendar year. The IRS, therefore, will not impose penalties under section 6721 or 6722 against an eligible educational institution that timely files or furnishes 2015 Forms 1098-T or statements with missing or incorrect TINs during 2016. This penalty relief does not apply to other failures subject to a penalty under section 6721 or 6722, such as failure to file 2015 Forms 1098-T timely, or a failure to include all of the other information required to be included on the Form 1098-T.

We urge the IRS to clarify that (1) the Form 1098-T will not be changed for the 2016 tax year and (2) colleges and universities will not be penalized for reporting the aggregate amount billed for qualified tuition and related expenses on Form 1098-T, Box 2, and leaving Box 1 blank for 2016.

We welcome communication between our organizations as you continue to work on the Form 1098-T redesign, instructions, and guidance plan project. Please contact Anne Gross, vice president for regulatory affairs, at 202-861-2544, anne.gross@nacubo.org or Mary Bachinger, director of tax policy, at 202-861-2581, mary.bachinger@nacubo.org.

We appreciate your consideration of this request.

Sincerely yours,

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.

John D. Walda
President and Chief Executive Officer

cc: John Koskinen, Commissioner, IRS
John Dalrymple, Deputy Commissioner for Services and Enforcement, IRS
Sunita Lough, Commissioner, Tax Exempt and Government Entities Division, IRS
Karen Schiller, Commissioner, Small Business/Self-Employed Division, IRS
Rob Malone, Director, Examination Policy, Small Business/Self-Employed Division, IRS

Mark Mazur, Assistant Secretary for Tax Policy, Treasury
Rochelle Hodes, Attorney-Advisor, Office of Tax Policy, Treasury
Brendan O'Dell, Attorney-Advisor, Office of Tax Policy, Treasury