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**Statement for the Record of
The National Association of College and University Business Officers**

For the Hearing on

“Internal Revenue Service Operations and the President’s Budget for Fiscal Year 2016”

**United States Senate Committee on Finance
Tuesday, February 3, 2015**

This statement is submitted for the record on behalf of the more than 2,100 public and nonprofit colleges and universities belonging to the National Association of College and University Business Officers. NACUBO represents chief financial officers and their staff at member institutions and our 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 IRS information returns seriously and strive to the best of their abilities to comply with agency rules and regulations.

Today provides an opportunity, as the Senate Finance Committee addresses the current state of operations and the budget of the Internal Revenue Service, to address an issue that gets to the heart of the current allocation of IRS resources. We write this statement in to order draw attention to an example of government wheel-spinning that for the past few years has burdened already squeezed college compliance offices. IRS has unnecessarily created an endless annual cycle of proposed fines, waiver requests, notices of delayed response, and eventually confirmation of waivers. This is bureaucracy at its worst.

On behalf of colleges and universities across the country, NACUBO requests 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. Under existing rules, institutions must solicit a TIN at least once a year from certain enrolled students, but are not responsible if students fail to respond or respond with incorrect information.

In August 2013 the IRS began asserting penalties against a large number of colleges and universities for filing Forms 1098-T with incorrect or missing TINs. These proposed penalties for the 2011 tax year generated unnecessary confusion for both the IRS and the regulated community.

Following an outcry, IRS decided to waive such penalties for the 2011 tax year. However, many schools still have yet to receive official notice that their fines for 2011 have been waived, despite the fact that the IRS announced the blanket waiver for 2011 one year ago.

Hundreds of campuses again received penalty notices addressing the 2012 tax year. Given that Forms 1098-T for 2012 were all filed long before the proposed fine notices were issued for the 2011 tax year, and also given that nothing has changed that should cause the IRS to come to a different outcome for 2012, it is unclear why the IRS is committed to repeating the cycle. 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 IRS regulations, 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.

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, 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.

Further, some students do not have, or choose not to provide, a TIN. With the popularity of dual enrollment programs increasing, particularly at community colleges, high school students may comprise a significant population of those with missing TINs. However, the rules require institutions to file Forms 1098-T for these students regardless of missing or inaccurate numbers. Foreign students may or may not have a TIN. In this context, it is inappropriate to assert penalties on colleges and universities for filing Forms 1098-T with incorrect TINs.

Notably, we appreciate the step IRS made to include guidance under section 6050S of the Internal Revenue Code regarding information reporting on tuition and related expenses on the 2014-2015 Priority Guidance Plan.

Recommendations

It is manifestly unfair to penalize colleges and universities for erroneous information that is beyond their control and which they cannot independently verify. The IRS should promptly issue

another blanket waiver for proposed fines associated with 2012 Forms 1098-T and not repeat this mistake in future years. There are no material differences between the 2011 and 2012 tax years that could justify disparate treatment. Other possible solutions going forward include:

1. 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.
2. 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.
3. 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.

We are very willing to work Congress and with the Service to find a solution, eliminate the morass of red tape and identify both short-and long-term alternatives to the current information-reporting enforcement program.