



Form 1098-T Steps into the Spotlight

Colleges and universities are required to annually notify students enrolled in degree programs of the costs to attend their institutions of higher learning by furnishing them Forms 1098-T, *Tuition Statement*. This article describes the information reporting requirements for the forms and explains how those requirements are changing—for better and perhaps worse.

Form 1098-T provides students with tuition information that can assist them in claiming educational tax credits on their individual income tax returns.¹ The tax information reporting form has undergone little change and generated minimal controversy since its inception in 1999. That is, until August 2013, when many colleges and universities inexplicably received IRS proposed penalty notices for submitting Forms 1098-T with missing or incorrect taxpayer identification numbers (“TINs”).

While the assertion of proposed penalties generated loud opposition, a policy debate quietly arose regarding the purpose of the Form 1098-T. In permitting educational institutions to report *either* amounts billed *or* amounts paid for qualifying tuition and related expenses, some argued that the form did not provide the necessary information for students to claim higher education tax credits.² As a result of these concerns, legislation was enacted in 2015 affecting Form 1098-T; the IRS responded with a revised form for tuition payments made during calendar year 2016.

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¹ See Joint Committee on Taxation, “General Explanation of Tax Legislation Enacted in 1997,” (Dec. 17, 1997, JCS-23-97) (explaining that the purpose of the Form 1098-T filing requirement is to assist students, their parents, and the IRS in calculating the amount of the HOPE and Lifetime Learning Credits potentially available).

² See, e.g., Department of the Treasury, “General Explanations of the Administration’s Fiscal Year 2013 Revenue Proposals,” (Feb. 2012) (the “Green Book”).

Background

Colleges and universities³ must report on Form 1098-T amounts relating to qualified tuition and related expenses, which includes fees required for enrollment and books, supplies, and equipment needed for a course of study.⁴ Institutions generally must furnish Forms 1098-T to students by January 31 and file Forms 1098-T with the IRS by February 28 (if paper filed) or March 31 (if e-filed), reporting amounts from the prior calendar year (e.g., the due date for furnishing the 2016 Form 1098-T to students for amounts paid during 2016 is January 31, 2017).⁵

An institution that fails to timely file correct Forms 1098-T with the IRS or timely furnish correct Forms 1098-T to students may be subject to penalties under sections 6721 and 6722, respectively. Currently, the penalty for each failure is \$260, not to exceed \$3,178,500 per taxpayer per year (with these penalty amounts doubling if failures occur under both sections 6721 and 6722).⁶ However, penalties do not apply if reporting failures are due to reasonable cause and not to willful neglect.⁷

The Automated Penalty Notice Program

The IRS maintains an automated penalty notice program to notify taxpayers (using Notice 972CG) of proposed penalties related to information returns (1) filed late, (2) filed with missing or incorrect TINs, and (3) filed on paper when more than 250 of a specific form type are submitted.⁸ Although the IRS historically has included numerous information returns in the program (e.g., Forms 1099-MISC, 1099-INT, 1099-DIV), without any advance warning or notice, the IRS mailed Notice 972CG to colleges and universities in late summer 2013 proposing penalties for 2011 Forms 1098-T filed with missing or incorrect TINs.

Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the "Code") or the applicable regulations promulgated pursuant to the Code (the "regulations").

³ Eligible educational institutions generally include colleges, universities, and vocational schools eligible to participate in the Department of Education's student aid programs. Section 6050S(e).

⁴ Section 6050S.

⁵ Sections 1.6050S-1(b)(5)(i), (c)(2)(i).

⁶ Sections 6721(a)(1), 6722(a)(1). The Trade Preferences Extension Act of 2015 increased these penalties from \$100 and \$1,500,000, respectively, for returns and statements required to be filed after December 31, 2015. Pub. L. 114-27, Section 806. Rev. Proc. 2016-11, relating to inflation-adjusted items, further increased the penalty amounts for information returns required to be filed and furnished after December 31, 2015.

⁷ Section 6724.

⁸ Recipients generally have 45 days to respond to Notice 972CG.

Institutions responded by submitting penalty waiver requests to the IRS, asserting that the missing or incorrect TINs were due to reasonable cause and not to willful neglect. Support for waiver of the penalties generally fell into three categories:

- Non-resident alien (“NRA”) students. Many Forms 1098-T underlying the 2011 IRS notices related to students that were nonresident aliens. The reporting requirement does not apply to NRAs unless the NRA student makes a request to the institution for the form.⁹ Section 6721 penalties do not apply to information returns that are not required to be filed.
- Events beyond the institution’s control. When requesting TINs from students, colleges and universities may receive incorrect numbers or students may fail to provide a number. In such circumstances, the institution is nonetheless required to file the information return. If an institution relies in good faith on the information provided and makes all required TIN solicitations, then the institution has acted in a “responsible manner,”¹⁰ a requirement for establishing reasonable cause.¹¹
- Significant mitigating factors. Institutions that have an established history of compliance with information reporting and other tax-related requirements may qualify for penalty relief.¹²

The IRS required each institution to separately seek waiver of the proposed 2011 penalties but did not immediately provide general relief to the higher education sector.¹³ Exacerbating the issue, institutions had already filed the 2012 Forms 1098-T (many with the same missing and incorrect TIN problems) when the IRS issued the 2011 penalty notices.

⁹ Section 1.6050S-1(a)(2)(i). Although NRA students may request Forms 1098-T, they generally did not make such requests.

¹⁰ See section 301.6724-1(d)(2)

¹¹ Section 301.6724-1(c)(6); see also section 1.6050S-1(e)(3).

¹² Section 301.6724-1(b)(2).

¹³ <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/IRS-to-Waive-Forms-5498-1098T-and-1099G-Penalties-for-the-Initial-Year-of-Introduction> (last accessed February 24, 2016).

Congressional Intervention

As a result of a new law, Forms 1098-T required to be filed or furnished after December 31, 2015 (i.e., calendar year 2015 forms) with missing or incorrect TINs will no longer be subject to TIN penalties (under sections 6721 or 6722) if the filing organization makes a contemporaneous certification under penalty of perjury that it complied with regulations governing the solicitation of student TINs.¹⁴ The IRS was unable, however, to make the required programming and form changes to implement the certification process for calendar year 2015 forms. As a result, the IRS announced that it would not impose penalties under sections 6721 or 6722 against an educational institution that timely files or furnishes 2015 Forms 1098-T or statements with missing or incorrect TINs.¹⁵

In light of this change, the IRS announced that it is waiving penalties against any college, university, or other educational institution for Forms 1098-T filed for calendar years 2012, 2013, and 2014 with incorrect or missing TINs.¹⁶

To implement this change for future years, the IRS updated the 2016 Form 1098-T to include a checkbox (in the "Student's taxpayer identification no." box) that permits the filing organization to certify its compliance with the requirements for obtaining a student's TIN. Generally, the regulations require the institution to request the student's TIN in writing and to clearly notify the student that the law requires the student to furnish a TIN so that it may be included on an information return filed by the institution.¹⁷ The institution must make such a solicitation by December 31 of each year until the enrolled student furnishes a TIN.

Amounts Paid or Amounts Billed

The 2016 Form 1098-T contains an additional change: the requirement that educational institutions report amounts paid for qualified tuition and related expenses, as required by section 212 of the Protecting Americans

¹⁴ Trade Preferences Extension Act of 2015, section 805 amended section 6724 by adding new paragraph (f).

¹⁵ Announcement 2016-3, IRB 2016-4 (Jan. 25, 2016).

¹⁶ <https://www.irs.gov/uac/Newsroom/For-Colleges-and-Universities--IRS-Waives-Penalties-for-Missing-or-Incorrect-Taxpayer-Identification-Numbers> (last accessed February 24, 2016).

¹⁷ Section 1.6050S-1(e)(3).

from Tax Hikes Act of 2015 (the "PATH Act").¹⁸ For qualified tuition and related expenses in calendar years 2003 through 2015, colleges and universities could choose between reporting either the aggregate amount billed or payments received.¹⁹ Historically, institutions generally reported amounts billed because reporting payments received proved difficult as institutions needed a process to distinguish qualified tuition and related expenses from other nonqualified payments (e.g., room and board).

The PATH Act amendment, however, removes the option to report amounts billed and requires all institutions to report only payments received for qualified tuition and related expenses. This reporting change generally is effective for expenses paid after December 31, 2015, for education furnished in academic periods beginning after such date.²⁰

Conclusion

The changes involving Form 1098-T provide some good news as well as perhaps some bad news. First for the good news. Starting with next year's filings for calendar year 2016, colleges and universities can simply check a box on the form to certify their compliance with the TIN solicitation rules to avoid reporting penalties. This simplified approach, however, should not diminish an institution's efforts to establish proper compliance procedures (which may become critical if examined by the IRS). Now for perhaps the bad news. The PATH Act introduces a new uncertainty for Form 1098-T compliance: tracking and reporting qualified tuition and related expenses received from students. Institutions may not have the software customization or capability necessary to identify whether amounts paid by students constitute "qualified tuition or related expenses." For educational institutions that currently report "amounts billed" on Forms 1098-T, it is important to begin now to evaluate systems and implement necessary changes to comply with the new "amounts paid" requirement for reporting in January 2017.

¹⁸ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, 129 Stat. 2242.

¹⁹ Compare 2015 Form 1098-T, Boxes 1 (payments received) and 2 (amounts billed). See Pub. L. No. 107-131 (January 16, 2002).

²⁰ PATH Act, section 212(b).



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