

**INFORMATION REPORTING PROGRAM
ADVISORY COMMITTEE**

**EMERGING COMPLIANCE ISSUES
SUBGROUP REPORT**

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Emerging Compliance Issues Subgroup Report

A. IRC § 6050S and Form 1098-T Reporting

Recommendations

IRPAC recommends the Proposed Regulations included in Notice of Proposed Rulemaking (REG-131418-14) be amended as follows:

1. Retain the exemption to reporting Form 1098-T, Tuition Statement, for students whom are non-resident aliens by reinstating Treasury Regulation § 1.6050S-1(a)(2)(i).
2. Retain the exemption to reporting Form 1098-T for students whom qualified tuition and related expenses are paid entirely with scholarships or formal billing arrangements by reinstating Treasury Regulations § 1.6050S-1(a)(2)(iii) & (iv).
3. Remove the requirement to report the number of months a student was a full-time student by deleting Proposed Treasury Regulation §1.6050S-1(b)(2)(ii)(I).
4. Allow institutions to report on Form 1098-T how payments are actually applied to students' accounts by revising Proposed Regulation § 1.6050S-1(b)(2)(J)(v) to read, "Payments received for qualified tuition and related expenses determined. For purposes of determining the amount of payments received for qualified tuition and related expenses during a calendar year, institutions may choose to report payments applied to charges in a manner that reflects the payment application in the institution's student account system. Alternatively, institutions may utilize a safe harbor method and report payments received with respect to an individual during the calendar year from any source (except for any scholarship or grant that, by its terms, must be applied to expenses other than qualified tuition and related expenses, such as room and board) are treated first as payments of qualified tuition and related expenses up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year, and then as payments of expenses other than qualified tuition and related expenses for enrollment during the calendar year. Payments received with respect to an amount billed for enrollment during an academic period beginning in the first 3 months of the following calendar year in which the payment is made are treated as payment of qualified tuition and related expenses in the calendar year during which the payment is received by the institution. For purposes of this section, a payment includes any positive account balance (such as any reimbursement or refund credited to an individual's account) that an institution applies toward current charges."
5. Allow institutions to report on Form 1098-T how reimbursements or refunds are actually applied to students' accounts by revising Proposed Regulation § 1.6050S-1(b)(2)(J)(vi) to read, "Reimbursements or refunds of payments for qualified tuition and related expenses determined. For purposes of determining the amount of reimbursements or refunds made of payments received for qualified tuition and related expenses, institutions may choose to report reimbursements or refunds of payments applied to charges in a manner that reflects the reimbursement or refund application in the institution's student

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account system. Alternatively, institutions may utilize a safe harbor method and report any reimbursement or refund made with respect to an individual during a calendar year (except for any refund of a scholarship or grant that, by its terms, was required to be applied to expenses other than qualified tuition and related expenses, such as room and board) is treated as a reimbursement or refund of payments for qualified tuition and related expenses up to the amount of any reduction in charges for qualified tuition and related expenses. For purposes of this section, a reimbursement or refund includes amounts that an institution credits to an individual's account, as well as amounts disbursed to, or on behalf of, the individual.”

Discussion

IRC § 6050S and the related Treasury Regulations require the reporting of information to assist taxpayers in claiming an education credit or deduction. This information is reported on IRS Form 1098-T. Qualified tuition and related expenses for Form 1098-T reporting purposes mirrors the definition found under the education credits of IRC § 25A. Generally, qualified tuition and related expenses means tuition and fees required for the enrollment or attendance at an eligible educational institution for courses of instruction at such institution.

For transactions occurring during calendar year 2016, information required to be reported in 2017 includes:

- The name, address and Taxpayer Identification Number (TIN) of any individual who is or has been enrolled at an eligible educational institution;
- The aggregate amount of payments received for qualified tuition and related expenses;
- The aggregate amount of grants received by such individual for payments of costs of attendance that are administered and processed by the institution;
- The amount of any adjustments to the aggregate amounts of previously reported payments received for qualified tuition and related expenses or grants; and
- The Employer Identification Number (EIN) of the eligible educational institution.

Prior to calendar year 2016, institutions had the option of reporting the aggregate amount billed for qualified tuition and related expenses or the aggregate amount of payments received for qualified tuition and related expenses. Protecting Americans from Tax Hikes of 2015; P.L. 114-113; removed the option for institutions to report the aggregate amount billed for qualified tuition and related expenses.

Notice of Proposed Rulemaking (REG-131418-14) was published into the Federal Register on August 2, 2016. Included in this notice are multiple changes to Form 1098-T reporting. The changes of concern are:

1. Removal of the exemption to reporting Form 1098-T for students whom are non-resident aliens.

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2. Removal of the exemption to reporting Form 1098-T for students whom qualified tuition and related expenses are paid entirely with scholarships or paid under a formal billing arrangement.
3. A new requirement to report the number of months a student was a full-time student during a calendar year.
4. Implementation of a, “payment application assumption” whereby for Form 1098-T reporting purposes, payments received during a calendar year are treated first as payments of qualified tuition and related expenses, unless the payment is a scholarship or grant which by its terms must be applied to non-qualified tuition and related expenses, up to the total amount billed by the institution for qualified tuition and related expenses for enrollment during the calendar year. Then payments are to be assumed to be applied to expenses other than qualified tuition and related expenses for enrollment during the calendar year. A similar rule applies in the case of payments received during the calendar year with respect to enrollment in an academic period beginning during the first three months of the next calendar year.
5. Implementation of a, “reimbursement / refund application assumption” whereby for Form 1098-T reporting purposes, reimbursements or refunds paid during a calendar year are treated first as qualified tuition and related expenses, unless the refund is a scholarship or grant which by its terms must be applied to non-qualified tuition and related expenses.

IRPAC’s concerns with the proposed regulations are:

1. By removing the exception to reporting on Form 1098-T for non-resident aliens, there will be a large increase in Forms 1098-T to be produced, which will not yield a materially higher number of correctly claimed education credits. Institutions, taxpayers and the IRS will face increased costs with processing and interpreting these forms, where there is generally no benefit. Currently, a non-resident alien may require an institution to report a Form 1098-T by requesting one. Non-resident aliens are only eligible for education credits when:
 - a. The non-resident alien is married and chose to file a joint return with a U.S. citizen or resident spouse.
 - b. The non-resident alien is a dual-status alien, and chose to be treated as a U.S. resident for the entire year.
2. By removing the exception to reporting on Form 1098-T for students whose scholarships are in excess of their qualified tuition and related expenses or paid under a formal billing arrangement, there will be a large increase in Forms 1098-T to be produced, which will not yield a materially higher number of correctly claimed education credits. Institutions, taxpayers and the IRS will face increased costs with processing and interpreting these forms, where there is little to no benefit. Generally, a student whose qualified tuition and related expenses are paid entirely with scholarships or is paid through a formal billing arrangement is

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not eligible for an education credit, thus a Form 1098-T would add no value to the taxpayer or the IRS.

3. For many institutions, the office processing the information currently required on Form 1098-T operates as a billing / collections office. This office contains information on charge types, but does not have information on dates of semesters. By requiring the number of months that a particular student was a full-time student to be reported on Form 1098-T, institutions will be required to implement a manual process to report accurate information. Further, institutions will be required to update systems to ensure that accurate information is reported and shared between offices securely.
4. By implementing a “payment application assumption,” institutions may be forced to have dual-student account information reporting. For example, if an institution did not program their payment application system to meet the IRS standards included in the notice of proposed rule-making, they would be forced to maintain one system for actual payment applications and one for tax reporting purposes. In this situation, if a student were to verify their Form 1098-T to the actual student account, there would be discrepancies between the sources of information.
5. By implementing a “reimbursement / refund application assumption,” institutions may be forced to have dual-student account information reporting. For example, if an institution did not program their reimbursement / refund application system to meet the IRS standards included in the notice of proposed rule-making, they would be forced to maintain one system for actual reimbursement / refund applications and one for tax reporting purposes. In this situation, if a student were to verify their Form 1098-T to the actual student account, there would be discrepancies between the sources of information.

B. Hard to Value Assets

Recommendation

IRPAC recommends that the IRS should promptly update the 2016 Form 5498, IRA Contribution Information, and Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., instructions to clarify for the industry, the below hard to value assets reporting questions that are currently a major concern to trustees:

1. What needs to be reported on year end statements to participants for Hard to Value Assets?
 - a. Does Form 5498, Box 15a (“Fair Market Value (FMV) of certain specified assets”) have to be completed for Hard to Value assets on the 1/31 reporting on the statement to participants?
 - b. If trustees fill it in on the 1/31 statement, do they need to provide the participant a separate Form 5498 statement by 5/31 if there have been no contributions? IRPAC recommends that if the 1/31 reporting is required to

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include the FMV of Hard to Value assets for Box 15a, then a separate Form 5498 should not be required to be filed with the participant by 5/31 if there have been no contributions.

- c. What codes, if any, should be used to report distributions on Form 1099-R of Hard to Value assets from Roth accounts because the “Guide to Distribution Codes” does not provide for any specific Codes?

Discussion

IRPAC truly appreciated the IRS providing a response to these questions this past June. However until the instructions are formally updated and posted to the IRS website, the industry does not have the appropriate guidance to modify their systems to comply with their 2016 Form 1099-R/5498 reporting requirement. In addition, for customers for whom there are no contributions made for the tax year, firms are able to provide a Fair Market Value (FMV) statement to participants by 1/31, in lieu of a Form 5498. Therefore, it is imperative that the industry immediately receive clarification, so that they can build and test their systems to meet the January 31st mailing deadline.

C. 529 Accounts

Recommendation

IRPAC has recommended that the IRS provide guidance clarifying how the industry can implement a new PATH Act reporting rule that eliminated the aggregation of distributions from multiple 529 accounts belonging to the same owner and beneficiary.

Discussion

The new PATH Act required distributions from 529 accounts to be tracked and maintained as coming only from the account from which it was distributed. The industry in prior years followed guidance that provided distributions from multiple accounts belonging to the same owner and beneficiary should be allocated among each of the accounts. Therefore, most firms had built systems to maintain the basis information allocable to each account and for each distribution that proportionally reduced the basis for each account held by the same beneficiary and owner. Given the new rules, the basis information contained in these systems can no longer be used and the industry is forced to develop a process that can be used as the account basis to properly report going forward. This creates an issue, since without clear guidance from the IRS, firms may be taking different approaches to arrive at an account basis. This may not be a problem if these accounts remain at their respective firms until they are eventually closed. But if they do transfer to another firm, there could be issues given the variances in the inconsistent logic used to arrive at a basis at each firm, which may ultimately impact our customers.

D. Form 1098 Mortgage Interest Reporting

Recommendation

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IRPAC recommends:

1. In the case where multiple properties secure a mortgage loan, the lender should be able to designate at their discretion one of the properties as the principal property securing the loan and use the address of that property for reporting purposes to complete Boxes 7, 8 and/or 9, as applicable.
2. In the case where a lender originated the mortgage loan during the year or the lender or servicer of a mortgage loan did not hold the loan as of the beginning of the year, the outstanding mortgage principal as of the beginning of the year should not be required to be reported.

Discussion

As a result of the new law, The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, there are new reporting requirements for the recipients of mortgage interest. Accordingly, the IRS has made modifications to the 2016 Form 1098, Mortgage Interest Statement.

New Boxes 7, 8 and 9 require reporting of information on the address of the property securing the mortgage loan. It is not uncommon for multiple properties to secure a mortgage loan. In the case where a mortgage loan is secured by multiple properties, the lender should be able to designate at their discretion one of the properties as the principal property securing the loan and use the address of that property for reporting purposes to complete Boxes 7, 8 and/or 9, as applicable. This approach is similar to the approach where there are multiple borrowers on the loan and the lender must designate one of the borrowers as the principal borrower for reporting purposes.

As a result of IRPAC's recommendation and discussions with the IRS, the IRS added supplemental instructions on June 17, 2016 under "Recent Developments" at "www.irs.gov/form1098" to clarify the 2016 Form 1098 reporting requirement as follows:

- "If more than one property secures the mortgage, you may report the address of any one of the properties using boxes 7-9 and disregard the other address(es)."

New Box 2 requires reporting of the "Outstanding mortgage principal as of 1/1/2016" (i.e. principal at beginning of year). Many loans are originated during the year after January 1st. Further, it is common for mortgage loans to be sold with a new servicer acquiring the loan servicing during the year and reporting the mortgage interest for the remainder of the year. The original lender or prior servicer will report the mortgage interest received for the first portion of the year prior to the sale of the loan and would report the outstanding principal amount as of the beginning of the year in Box 2. In many cases, the new servicer of the loan does not acquire the data regarding the outstanding principal balance on January 1st from the original lender or prior servicer of the loan when acquiring the loan servicing. As a result, where a lender originated the mortgage loan during the year or the lender or servicer of a mortgage loan did not hold the loan as of the beginning of the year, the outstanding mortgage principal as of the beginning of the year should not be required to be reported in Box 2.

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As a result of IRPAC's recommendation and discussions with the IRS, the IRS added supplemental instructions on June 17, 2016 under "Recent Developments" at "www.irs.gov/form1098" to clarify the 2016 Form 1098 reporting requirement as follows:

- "The reporting instructions for Box 2, Form 1098, Mortgage Interest Statement, are amended to add the following: If the mortgage originated in 2016 or you acquired the mortgage during 2016, leave this box blank."

IRPAC would like to thank those involved from the IRS for quickly providing the recommended clarifying supplemental instructions to the 2016 Form 1098 reporting requirements to give the industry much needed guidance. IRPAC would request that these supplemental 2016 instructions be made part of the permanent Form 1098 instructions for reporting for tax years 2017 and the future.

E. IRS Publication 1179 Substitute 1099-B Specifications

Recommendation

IRPAC recommends that the IRS specify how to report transactions that have the ordinary checkbox marked in Box 2 of the Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, on a substitute form.

Discussion

The instructions within the 2016 Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns, does not provide brokers information on whether a transaction that has the ordinary box in Box 2 can be included on the substitute form. IRPAC recommends that the IRS specify that transactions with the ordinary box checked may be included on a substitute form and brokers should report them based on the holding period of the security and whether basis is being provided to the IRS.

F. 2016 Form 8949 Instructions

Recommendation

IRPAC recommends that the IRS provide instruction for taxpayers on where to report transactions that only have the ordinary checkbox marked in Box 2 of the Form 1099-B, Proceeds From Broker and Barter Exchange Transactions.

Discussion

IRPAC is requesting guidance for taxpayers on how to report transactions that have the ordinary checkbox marked in box 2 of the 1099-B on the form. The 8949 is divided into two parts, short-term and long-term transactions. Brokers anticipate that taxpayers who see the ordinary box may be confused about how to report the transaction. It would be helpful to taxpayers if information was included under the Specific Instructions if that they should report the transaction in Part I or Part II based one their holding period for the security.

G. IRC §6050W and Form 1099-K Reporting

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Recommendations

IRPAC continues to recommend that guidance is needed related to IRC § 6050W "Returns Relating to Payments Made in Settlement of Payment Card and Third Party Network Transactions." While past IRPAC reports highlight several areas of needed guidance, most importantly, IRPAC recommends that the key terms integral to the meaning of "third party payment network" be defined because entities making payments with respect to third party payment network transactions (called third party settlement organizations or TPSOs) are not subject to reporting under IRC § 6050W unless the payments made to any given recipient exceed a very broad de minimis threshold. Because of the broad definition of TPSO, this enables different interpretations of the de minimis rule and can impact the usefulness of the reporting data because of the potential underreporting, IRPAC urges the IRS to prioritize this project.

Discussion

Guidance under section 6050W has been on the Treasury Priority Guidance Plan for the last several years and IRPAC was pleased to see that this project has remained on that Plan for 2016-2017. Notwithstanding this prioritization, however, the IRS declined to discuss this issue with IRPAC during 2016. IRPAC hopes that progress on this very important guidance project at the IRS has not stalled and remains committed to working with the IRS on these issues.

While IRPAC understands that the IRS has had serious budget constraints placed on the organization, IRPAC believes that further prioritizing the IRC § 6050W guidance project would not only help the tax reporting community, but also would help the IRS tax collection efforts. At a very minimum, the IRS should address the definitional issues associated with which entities qualify as TPSOs eligible to avail themselves of the de minimis rules which *eliminates* reporting on otherwise reportable amounts if either the amount paid within a year does not exceed \$20,000 or the aggregate number of such transactions does not exceed 200. Because these de minimis rules can completely eliminate the obligation to issue Forms 1099-K, Payment Card and Third Party Network Transactions, to payees, IRPAC believes that guidance is urgently needed regarding the rules for determining which payors can qualify for TPSO status.

H. Complex Debt Reporting Requirements

IRPAC partnered with the IRS on several initiatives related to the Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, for Tax Year 2016. As a result of our discussions the IRS published an amendment to the 2016 Instructions for Form 1099-B on August 16, 2016 clarifying the use of the Ordinary check box. IRPAC thanks those involved with providing the industry with needed guidance quickly.