

**INFORMATION REPORTING PROGRAM  
ADVISORY COMMITTEE**

**Emerging Compliance Issues Subgroup Report**

**DARRELL D. GRANAHAN, SUBGROUP CHAIR**

**TENESHA CARTER**

**RANDALL CATHELL**

**KEITH KING-CHAIR**

**RYAN LOVIN**

**NINA TROSS**

**JOEL LEVENSON**

## Emerging Compliance Issues

The ECI Subcommittee would like to thank the IRS for great progress this year. In the 2017 IRPAC report, the committee reported eight open issues and we are pleased to report that five of those issues were successfully remediated. The IRS and the committee worked hard together to clear out the issues on the following topics:

- A. Form 1099-R Hard to Value Assets
- B. Aggregation of distribution from multiple 529 plans
- C. Form 1098 Mortgage Interest Reporting multiple properties
- D. IRS updated Publication 1179
- E. Form 1099-B Box 2 clarification

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

IRPAC would like to thank the IRS for updating IRS Publication 1220 to provide clarity on the TIN solicitation checkbox. The updated description provides needed clarity on the frequency and legislative intent of the checkbox.

IRPAC makes the following recommendations concerning Internal Revenue Code §6050S, the related Treasury Regulations and their effect on IRS Form 1098-T reporting:

1. As noted in the 2016 IRPAC Public Report, the Committee continues to recommend the following amendments to the Proposed Regulations included in the Notice of Proposed Rulemaking (REG-131418-14):
  - a. 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).
  - b. Remove the requirement to report the number of months a student was a fulltime student by deleting Proposed Treasury Regulation §1.6050S-1(b)(2)(ii)(I).
  - c. 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 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."

2. Provide guidance to clarify that institutions which change their reporting method to "Payments received" do not have to complete box 4 "Adjustments Made for a Prior Year" until the institution reimburses or refunds an amount that was previously reported as an amount paid. Amounts that were previously reported as "Amounts Billed" will have no impact on reporting in box 4 if an institution is reporting on the "Payments received" basis.

## **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 and in subsequent years 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. The Higher Education Industry and IRPAC are grateful to the IRS for penalty relief granted under IRS Announcements 2016-17; 2016-42 for institutions whom continue to report on the amounts billed basis. Educational Institutions and IRPAC understand that the amounts billed reporting basis will no longer be an option for the 2018 calendar year to be reported in 2019.

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. IRPAC's concerns with the proposed regulations are:

1a. 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 nonresident 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.

1b. 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.

1c. 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.

2. The Protecting Americans from Tax Hikes Act of 2015, included in the Consolidated Appropriations Act of 2016 (P.L. 114-113) removed the option for educational institutions to report amounts billed for qualified tuition and related expenses (QTRE), thus requiring institutions to report amounts received for QTRE. Regulation §1.6050S-1(b) requires that institutions reporting payments received for QTRE also report any reimbursements or refunds made during the current calendar year that relate to payments of qualified tuition and related expenses that were reported by the institution for a prior calendar year. IRPAC recommends the IRS produce guidance that confirms institutions are not required to report amounts refunded or reimbursed that were previously reported as an amount billed for QTRE.

## **B. IRC §6050W and Form 1099-K Reporting Recommendations**

IRPAC continues to recommend that further 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 has also noted that many transactions are reported as result of an initialization submission to test out the point of sale device and then the merchant does not continue business with that payment processor. IRPAC feels that tens of thousands of forms are reported that have a gross reportable sales (GRS) in the amount of \$0.01 and hundreds of thousands of forms with GRS less than \$1.00. This creates confusion for the taxpayer and a cost burden to the payer. 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 does not

appear to have made any progress in making any changes. IRPAC hopes that advancement on this very important guidance project will take place soon.

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 doesn't 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 to payees, IRPAC believes that guidance is urgently needed regarding the rules for determining which payers can qualify for TPSO status.

### **C. Form 1042 and 1042-S Matching and Penalty Assessments Recommendations**

IRPAC recommends revising the penalty assessment and collection procedures where the IRS is still in the process of verifying the deposit of withholding taxes reported on Form 1042-S. To implement this recommendation, IRPAC advocates that the IRS adopt four specific changes.

First, the IRS should refrain from assessing penalties where the withholding deposit matching process has not yet been completed. The collection proceedings associated with such penalties should likewise be postponed.

Second, the IRS should send a letter informing the taxpayer when additional time is needed to match deposits with credit and refund claims. Such letters should provide an estimate of the additional time required to resolve the matter.

Third, IRPAC recommends the IRS provide a provisional credit in the amount of the claimed withholding, until the matching process has been completed. Where delays are protracted, taxpayers should receive interest on their delayed refunds.

Fourth, IRPAC recommends that IRS Service Centers adopt policies and procedures that implement the instructions provided by Program Managers with respect to the non-assessment of penalties in voluntary disclosure cases.

These recommended changes are expected to result in a more efficient use of IRS resources, in addition to increased taxpayer satisfaction regarding efficient resolution of tax liabilities.

### **Discussion**

In Notice 2015-10 the IRS announced that it would begin to match deposits of withholding taxes before processing refund claims. IRPAC understands that this policy change is necessary in order to address fraudulent refund claims for taxes that were

never remitted to the IRS. Thus, the general need for this change in policy is recognized and not at issue.

Various service providers report experiencing delays in receiving claimed refunds. Partial refunds and complete denials are also common. The reasoning behind the complete and partial denials is not always clear.

Accordingly, while the IRS is conducting its verification procedures regarding withholding deposits, there should be a commensurate delay regarding penalty assessments and collection efforts. The assessment of penalties, when the IRS has not completed its work with respect to the matching of credit claims to deposits, erodes taxpayer confidence in the tax collection and withholding process, and is an inefficient use of resources for the IRS, taxpayers, and their advisors.

IRPAC appreciates and applauds the IRS for the continuation of the voluntary disclosure process with respect to delinquent Forms 1042 and 1042-S, and the associated payment of taxes due. Nonetheless, taxpayers that have reached an agreement with IRS Program Managers with respect to the non-assessment of penalties in voluntary disclosure cases frequently find that when the delinquent returns are sent to IRS Service Centers for processing penalty assessments are nonetheless issued. The assessment of penalties by the processing Service Centers, in clear violation of the instructions provided by the Foreign Payments Practice Program Managers, is further exacerbating the inefficient utilization of resources for both the Service and taxpayers, and eroding trust placed in voluntary disclosure programs and the tax collection system generally.