



# Form 1098-T Update

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# Bryan Pautsch

› Bryan Pautsch, CPA, JD, has extensive experience in structuring and tax planning for both tax-exempt and taxable organizations. His expertise includes identifying planning opportunities and assisting in implementation of those strategies. Bryan also specializes in IRS and state audits and appeals, and employee benefit issues. Bryan assists clients in areas such as:

- › Tax consulting and planning for tax-exempt organizations
- › Structuring of joint ventures between tax-exempt organizations and taxable entities
- › Analysis and structuring for unrelated business income
- › Analysis and structuring for private inurement, excess benefits transactions and governance issues
- › Techniques and vehicles for charitable giving
- › Consulting and planning for private foundations

## › Affiliations

- › American Institute of Certified Public Accountants
- › Wisconsin Institute of Certified Public Accountants
- › American, Oklahoma, Wisconsin and Milwaukee Bar Associations
- › National Association of College and University Business Officers
- › Central Association of College and University Business Officers
- › Great Lakes Area TE/GE Council, Member
- › Cedarburg Basketball Club, Inc., Past Board Member
- › Dave & Carole Miracle Marathon for Children's Hospital, Volunteer
- › Make-A-Wish Foundation, Past Board Member

## › Education

- › Bachelor's Degree in Accounting, Business and Economics, Coe College
- › Juris Doctor, University of Tulsa
- › Licensed to practice law in Wisconsin and Oklahoma



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# IRS Form 1098-T Update

# Agenda

- › **Background**
- › **Amendments - Trade Preferences Extension Act of 2015 (TPEA)**
- › **Amendments - Protecting Americans from Tax Hikes Act of 2015 (PATH)**
- › **Proposed Regulations and Explanations**
- › **Summary**

# Background – Internal Revenue Code Sections

- › Section 25A – provides students and their families with two tax credits to help pay for college
- › Section 222 – generally provides a deduction for qualified tuition and related expenses paid by a taxpayer during the year subject to certain dollar and income limitations
- › Section 6050S – requires eligible institutions to file information returns and to furnish statements to assist taxpayers and the IRS in determining whether a taxpayer is eligible for a tax credit under Section 25A

# Background – Internal Revenue Code Sections PENALTIES

- › Section 6721 – imposes a penalty on the eligible institution that fails to timely file correct information returns with the IRS
- › Section 6722 – imposes a penalty on a eligible institution that fails to timely furnish correct written statements to the student
- › Generally penalties are \$100 per failure with an annual maximum of \$1.5 million. After December 31, 2015 penalty is increased to \$250 per failure with an annual maximum of \$3 million.

# Background – Internal Revenue Code Sections

## PENALTY RELIEF

- › Section 6724(a) – the Section 6721 or 6722 penalty does not apply if the failure to timely file or failure to include correct information is due to reasonable cause and not willful neglect
- › Regulation 1.6050S-1(e)(3) provides special rules for institutions to establish reasonable cause for a failure to include a correct TIN on Form 1098-T

# Background

- › The Internal Revenue Service (IRS) recently issued proposed regulations that revise the rules for reporting qualified tuition and related expenses on Form 1098-T, Tuition Statement, and conform the regulations to changes made by the Trade Preferences Extension Act (TPEA) and the Protecting Americans from Tax Hikes (PATH) Act.

# Background

- › The proposed regulations affect certain educational institutions required to file Form 1098-T. Comments and discussion topic outlines for a public hearing on the proposed regulations scheduled for November 30, 2016 are due by October 31, 2016.

# Trade Preference Extension Act - Amendments to Sections 25A, 222 and 6724

- › Section 25A (g)(8) provides for taxable years beginning after June 29, 2015, a taxpayer may not claim an education tax credit under Section 25A unless the taxpayer receives a statement furnished by an eligible educational institution (i.e. recipient's copy of Form 1098-T)
- › Section 222(d) provides that taxable years beginning after June 29, 2015 a taxpayer may not claim a deduction for qualified tuition and related expenses unless the taxpayer receives the recipient's copy of the Form 1098-T
- › For purposes of both the education credits and deduction, a taxpayer who claims a student as a dependent will be treated as receiving the statement even if the student receives the statement

# Trade Preference Extension Act - Amendments to Sections 25A, 222 and 6724

- › Section 6724(f) was added – no penalty will be imposed under Sections 6721 or 6722 against an eligible institution solely by reason of failing to include the individual’s TIN on Form 1098-T or related statement if the institution certifies compliance with IRS standards for soliciting TINs.
- › Standards for obtaining the student’s TIN are set forth in 1.6050S-1(e)(3)(ii) and (iii) of the existing regs. They are now found in 1.6050S-1(f)(3)(ii) and (iii) of the proposed regulations

# Trade Preference Extension Act - Amendments to Sections 25A, 222 and 6724

## › Standards

- The institution does not have to solicit a student's TIN and may use the TIN that it has in its records
  - If no records, it must request the individual's TIN in writing and must clearly notify the individual that the laws require the individual to furnish a TIN
  - Form W9S
  - The institution may also develop a separate request form or incorporate the request into other forms customarily used by the institution such as admission forms financial aid or a enrollment forms
- › Proposed Regulations make clear that the certification will not protect the institution from penalty if the IRS later determines that the requirements were not met

# Protecting Americans from Tax Hikes Act of 2015 (PATH) Amendments to Section 25A, 222 and 6050S

- › Section 25A - American Opportunity Tax Credit (AOTC)
  - The AOTC is permanent
  - The AOTC is not allowed if the student's TIN and the TIN of the taxpayer claiming the credit is issued after the due date for filing the return for taxable year
  - The AOTC is not allowed if the return does not include the EIN of any institution to which the qualified tuition and related expenses were paid to
  
- › Section 222 – Deduction for qualified tuition and related expenses
  - Extended the deduction for taxable years beginning after December 31, 2014 and ending on December 31, 2016

# Protecting Americans from Tax Hikes Act of 2015 (PATH) Amendments to Section 25A, 222 and 6050S

- › Section 6050S – Returns relating to higher education tuition and related expenses
  - Requires eligible institutions to report their EIN on the return and statement (6050S(b)(2))
  - Eliminates the option for eligible institutions to report the aggregate qualified tuition and related expenses billed or the year
  - For expenses paid after December 31, 2015 for education, eligible institutions are required to report aggregate payments of qualified tuition and related expenses received during the year
  - Announcement 2016-17 provides limited penalty relief and will allow institutions to report the amount billed in calendar year 2016

# Proposed Regulations and Explanations

- › Taxpayer (student/parent)
  - Claiming education tax benefits of the LLC or the AOTC or claim the tax deduction under Section 222 - the student must receive a Form 1098-T
  - AOTC is further limited. First the taxpayer can only claim the AOTC if the taxpayer includes the EIN of the institution on his/hers tax return. Second the taxpayer can claim the AOTC only if the TIN of the student and the TIN of the taxpayer on the return for which the credit was claimed are issued on or before the due date of the original return
  - Form 1098-T assist taxpayers in determining whether they are eligible to claim education tax benefits
  - Prior law, no requirement to receive a 1098-T to claim the benefits

# Proposed Regulations and Explanations

- › Taxpayer (student/parent)
  - An exception to the Form 1098-T requirement
    - Student has not received a Form 1098-T by the later of (a) January 31 of the following year or (b) the date the tax return claiming the credit is filed
  - This Exception only applies if the taxpayer or taxpayer dependent has requested in the manner prescribed in publications etc. the institution to furnish the Form 1098-T and has fully cooperated with the institution's efforts to obtain the information necessary to furnish the statement
  - LLC to improve job skills and no academic credit

# Proposed Regulations and Explanations

- › Form 1098-T Requirements – Institution Filing Requirements
  - Current regulations provide exceptions to reporting under which institutions are not required to file Form 1098-T
    - Nonresident aliens;
    - Students whose qualified tuition and related expenses are waived or paid with scholarships;
    - Students whose qualified tuition are paid under formal billing arrangement; and
    - Course for which no academic credit is allowed
  - The proposed regulations eliminate the first three exceptions but does not eliminate the exception to reporting for courses for which no academic credit is awarded

# Proposed Regulations and Explanations

## › Form 1098-T Requirements – Amount to Report

- The amount reported on Form 1098-T may not reflect the total amount of qualified tuition and related expenses that the taxpayer has paid during the taxable year
- Proposed Regulation 1.25A-2(d) reflect the changes by allowing students to claim the AOTC for expenses paid for course materials (books, supplies, and equipment) required for enrollment or attendance whether or not purchased from the institution
- Prior law – “as a condition of attendance or enrollment”
- A taxpayer who meets the requirements regarding Form 1098-T and who can substantiate payment of qualified tuition and related expenses may include these unreported expenses in the computation of the amount of educational tax credit even though not reported on 1098-T

# Proposed Regulations and Explanations

- › Form 1098-T Requirements – Institution Amount to Report
  - Proposed Regulation 1.6050S-1(a)(2)(i) an institution is not required to report the amount paid or billed for books, supplies, and equipment unless the amount is a fee that must be paid to the eligible institution as a condition of enrollment or attendance
  - Proposed Regulations 1.6050S(b)(2)(B)(i) eliminates the option for institutions to report the aggregate amount billed for qualified tuition and related expenses
  - Announcement 2016-17 penalty relief for 2016 Form 1098-T solely because the reports aggregate amount billed rather than aggregate payments received for tuition and related expenses

# Proposed Regulations and Explanations

- › Form 1098-T Requirements – Institutions # of Months Fulltime Student
  - Proposed Regulation 1.6050S-1(b)(2)(ii) require the institution to indicate the number of months that a student was a full time student
  - One day in a month is treated as an entire month
  - This information will assist the IRS in determining whether a parent properly claimed the student as a dependent and therefore properly claim the credit

# Proposed Regulations and Explanations

- › Form 1098-T Requirements – Institutions
  - The proposed regulations include a requirement that the amount paid that relates to an academic period that begins in the first three months of the next calendar year be specifically stated on Form 1098-T
  - This will assist the IRS in identifying credits that are claimed in two years for the same qualified tuition

# Proposed Regulations and Explanations

## Form 1098-T Instructions to Students Required

- › Proposed regulations revise 1.6050S-1(c)(1)(iii) regarding instructions accompanying Form 1098-T that institution furnishes to students.
  - The proposed regulations adds paragraph D
    - Informs students that they may be able to optimize federal tax benefits by allocating scholarship or grant into taxable income
  - This new paragraph will alert students about the ability to optimize tax benefits
  - Including amounts will result in scholarship or grant no longer tax free
  - No longer be required to reduce qualified tuition/expenses by amount paid with now taxable scholarship or grant
  - The instructions also must specifically identify IRS Publication 970 Tax Benefits for Education as a resource

# Proposed Regulations and Explanations

## Form 1098-T Definition of “Administered and Processed”

- › Current regulations do not define “administered and processed” for purposes of determining which scholarships and grants an institution is required to report.
  - Lack of definition resulted in uncertainty and inconsistent reporting
- › Proposed regulations – a scholarship or grant is administered and processed by an institution if the institution receives payment of an amount (whether by cash, check or other means) that the institution knows or reasonably should know, that it is a scholarship or grant
  - Regardless of whether the institution is named as a payee or co-payee
  - Regardless of whether the student endorses the check or other means of payment for the benefit of the institution
- › Example of “Administered and Processed”:
  - Pell Grants

## Example 1

- › University M received a Pell Grant on behalf of Student B, a student enrolled in a degree program at University M. University M provides all required notifications to and obtains all the necessary paperwork from Student B and applies the Pell Grant to Student B's account. Because University M received the Pell Grant and University M knows or should know that the Pell Grant is a scholarship or grant, under paragraph (e)(1)(i) of this section, the Pell Grant is administered and processed by University M.

## Example 2

- › University N receives a check from Organization Y made out to Student C. University N is not named as a payee on the check. The cover letter accompanying the check provides University N with sufficient information to reasonably know that the check represents payment of a scholarship that may be used to pay Student C's qualified tuition and related expenses. Under paragraph (e)(1)(i) of this section, the scholarship from Organization Y is administered and processed by University N. This is the case even though University N is not named on the check as a payee and regardless of whether Student C endorses the check over to University N.

# Proposed Regulations and Explanations

## Proposed Regulations 1.6050S-1(b)(2)(iv)-(vi)

- › Separate reporting of reimbursements or refunds of payments of qualified tuition and related expenses
  - Institution must separately report any reimbursements or refunds made during the current calendar that relate to payments in a prior year on Form 1098-T
  - Reimbursements/refunds are not netted against any payments received during the current year
  
- › Payments received for qualified tuition and related expenses determined.
  - The clarification is intended to provide a uniform rule for all institutions to determine whether a payment received by an institution should be reported on a Form 1098-T as qualified tuition and related expenses in the current year

# Proposed Regulations and Explanations

## Proposed Regulations 1.6050S-1(b)(2)(iv)-(vi)

- Payments received during a calendar year 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 and then as payments of 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

# Proposed Regulations and Explanations

## Proposed Regulations 1.6050S-1(b)(2)(iv)-(vi)

- In that case, the payments received by the institution with respect to the amount billed for enrollment in an academic period beginning during the first three months of the next calendar year are treated as payments of qualified tuition and related expenses for the calendar year in which the payments are received
- Reimbursements of refunds of payments for qualified tuition and related expenses determined. Proposed Regulation 1.6050-1(b)(2)(vi)

# Proposed Regulations and Explanations

## Proposed Regulations 1.6050S-1(b)(2)(iv)-(vi)

- › Examples have been added to 1.6050S-1(b)(2)(vii) to illustrate these rules. Treasury and the IRS request comments regarding these rules, including alternative approaches and recommendations for addressing other issues that should be covered by these rules

# Proposed Regulations and Explanations – Other Examples

- › In December 2016, Taxpayer A, a calendar year taxpayer who is not a dependent of another taxpayer under section 151, receives a bill from College Z for \$5,000 for qualified tuition and related expenses to attend College Z for the 2017 spring semester, which begins in January 2017.
- › This is the first semester that Taxpayer A will attend College Z. On December 15, 2016, Taxpayer A pays College Z \$1,000 in qualified tuition and related expenses for the 2017 spring semester.
- › On February 15, 2017, Taxpayer A pays College Z the remaining \$4,000 due for qualified tuition and related expenses for the 2017 spring semester.
- › In August 2017, Taxpayer A receives a bill from College Z for \$7,000 for qualified tuition and related expenses to attend College Z for the 2017 fall semester, which begins in September 2017.
- › Taxpayer A pays the entire \$7,000 on September 1, 2017.
- › In December 2017, Taxpayer A receives a bill from College Z for \$7,000 for qualified tuition and related expenses to attend for the 2018 spring semester.

# Proposed Regulations and Explanations – Other Examples (Continued)

- › Taxpayer A pays \$1,000 of the 2018 spring semester bill on December 15, 2017 and \$6,000 of that bill in February 15, 2018.
- › Taxpayer A does not enroll in an eligible educational institution for the 2018 fall semester or the 2019 spring semester.
- › Taxpayer A may claim an education tax credit on Taxpayer A's 2016 Form 1040 with respect to the \$1,000 taxpayer paid to College Z on December 15, 2016 for the 2017 spring semester.
- › On Taxpayer A's 2017 Form 1040, Taxpayer A may claim an education credit with respect to the \$12,000 Taxpayer A paid to College Z during 2017 (\$4,000 paid on February 15, 2017 for the 2017 spring semester, \$7,000 paid on September 1, 2017, for the 2017 fall semester, and \$1,000 paid on December 15, 2017, for the 2018 spring semester).
- › On Taxpayer A's 2018 Form 1040, Taxpayer A may claim an education credit with respect to the \$6,000 taxpayer paid to College Z on February 15, 2018.

# Proposed Regulations and Explanations – Other Examples (Continued)

- › 2016 Form 1098-T 1,000 received in 2016 for 2017 tuition and related expenses for spring semester (first three months)
  
- › 2017 Form 1098-T 12,000 in total
  - 4,000 payment received in 2017 for spring semester 2017
  - 7,000 payment received in 2017 for fall semester 2017
  - 1,000 payment received in 2017 for spring semester (first three months)
  
- › 2018 Form 1098-T 6,000 received in 2018 for 2018 tuition and related expenses for spring semester

# Summary

- › The impact of the proposed regulations is significant
- › Institutions will be required report more specific detail on Form 1098-T
- › Requires implementation of new technological changes to enable proper reporting
- › Should start assessing ability to comply with new requirements now
- › The type of information must be tracked and reported on Form 1098-T
  - A requirement to report the number of months that a student was enrolled as a full time student during the calendar year
  - A requirement to report the amount paid during a year that is for an academic period that begins in the first three months of the next calendar year. Current rules – just check a box
  - Starting in 2017, no longer have option of reporting aggregate tuition and expenses billed for calendar year (payments received must be reported)

# Summary

- › The number of Form 1098-T's will increase with the inclusion of the following groups:
  - Nonresident aliens
  - Students whose qualified tuition and expenses are covered entirely with scholarships
  - Students whose qualified tuition are paid under a formal billing arrangement
  
- › A requirement to state that payments received during the year will first be treated as qualified tuition and expenses up to the amount billed, then as other nonqualified expenses

# Summary

- › NACUBO's request
  
- › It would be valuable for the IRS to hear from individual colleges and universities and they urge institutions to draft their own comment letters to IRS and include the following information:
  - The increase in the number of 1098-Ts your institution would need to report if the proposed rules were adopted without changes. This will be helpful not only to identify the administrative burden on your institution, but will inform the IRS about how many more forms the Service would be faced with processing.
  - How much more will it cost your institution to generate the additional 1098-Ts?
  - Examples of how the proposed payment and refund priority assumptions may lead to confusion when compared to the student's actual account activity.
  - Costs and amount of time that will be required to reprogram student information systems to implement new reporting items (e.g., number of months of full-time enrollment, amounts received for academic terms beginning in the following tax year, etc.).