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#5**TUITION REPORTING: Allow TIN Matching By Colleges****PROBLEM**

Although the tax code requires colleges and universities to file information returns with the IRS reflecting tuition from students,<sup>1</sup> the law does not permit these eligible educational institutions to verify Taxpayer Identification Numbers (TINs) with the IRS prior to filing.<sup>2</sup> Unlike other information return filers who can perfect TINs once the IRS advises them of any errors, colleges and universities must rely on student input while still facing penalties for errors. In tax year 2012, the IRS could not validate over 22,000 TINs on information returns for more than 24 million individuals on Form 1098-T, *Tuition Statement*.<sup>33</sup>

**EXAMPLE**

University X charges or receives tuition from 60,000 students, from whom the registrar solicits TINs. University X accepts this student information to prepare 60,000 Forms 1098-T, which it duly files with the IRS. Upon filing, the IRS finds that 15,000 of the TINs do not match the students' names, whether due to transposition errors, name changes, or otherwise. As a result, University X faces \$1.5 million in penalties. If University X also includes the incorrect TINs on statements it furnished the students, it could potentially be liable for an additional \$1.5 million in penalties.

**RECOMMENDATION**

Allow colleges and universities to verify TINs with the IRS prior to filing annual information returns on tuition payments.

**PRESENT LAW**

Generally, colleges and universities must file with the IRS annual information returns reflecting tuition paid or amounts billed.<sup>4</sup> These eligible educational institutions use Form 1098-T, *Tuition Statement*, which identifies the student by name, address, and TIN. These tuition statements facilitate the administration of education credits and deductions that depend on tuition paid.<sup>5</sup>

The penalty for failure to file a correct information return is generally \$100, and the penalty for failure to furnish a correct payee statement is also generally \$100.<sup>6</sup> The IRS will not impose the penalty if the filer shows the failure was due to reasonable cause and not willful neglect.<sup>7</sup> If a college reports an incorrect TIN on Form 1098-T due to inaccurate input from the student, the college may obtain a penalty waiver

1 Internal Revenue Code (IRC) § 6050S.

2 IRC § 6050S(e) defines "eligible educational institution" by cross-reference to IRC § 25A(f)(2), which in turn cross-references the Higher Education Act of 1965, 20 U.S.C. § 1088.

3 See IRS Compliance Data Warehouse, Info. Returns Master File.

4 See IRC § 6050S. The college must supply a copy to the student (payee statement).

5 See IRC §§ 25A, 222.

6 See IRC §§ 6721, 6722.

7 See IRC § 6724.

upon proving reasonable cause. The college must establish that the failure to include a correct TIN was due to events beyond its control and that it acted in a responsible manner by soliciting a TIN from the student.<sup>8</sup>

In the case of an individual, a TIN generally is the Social Security number (SSN).<sup>9</sup> For an individual not eligible for an SSN who has a federal tax reporting requirement, the IRS assigns an Individual Taxpayer Identification Number (ITIN).<sup>10</sup>

Regarding information returns that report payments subject to backup withholding, such as dividends or other income, the tax law allows the payor, before filing the return, to verify with the IRS the TIN furnished by the payee.<sup>11</sup> As a mechanism, the payor transmits name/TIN combinations through the IRS online interactive or bulk TIN Matching Program, accessible 24 hours a day, seven days a week.<sup>12</sup> The IRS matching response is generally limited to notification of a match or mismatch.<sup>13</sup> If the IRS response indicates a TIN mismatch, the payor has the opportunity to resolve the inaccuracy with the payee, prior to filing an information return. Otherwise, the IRS generally may not disclose a taxpayer's name, TIN, or other return information.<sup>14</sup>

## REASONS FOR CHANGE

Currently, the tax law authorizes the IRS TIN Matching program only for payors of reportable payments subject to backup withholding. Thus, it excludes colleges reporting tuition received (or billed), not making reportable payments subject to backup withholding (*i.e.* not paying income). Nevertheless, as a practical matter, colleges have an information reporting requirement for which they need to verify TINs. TINs may not match a student's name for various reasons, such as transposition errors or name changes. To allow the IRS to alert eligible educational institutions of mismatches to resolve with students prior to filing information returns, Congress should expand the TIN Matching beyond the currently authorized program. This recommendation benefits the IRS, information return filers, and students by facilitating accurate reports.

8 See Treas. Reg. §§ 1.6050S-1(e)(3); 301.6724-1.

9 See IRC § 6109.

10 See Treas. Reg. § 1.6109-1(d).

11 See IRC § 3406; Treas. Reg. § 31.3406(j)-1; Rev. Proc. 2003-9, 2003-8 I.R.B. 516.

12 See IRS Pub. 2108A, *On-line Taxpayer Identification Number (TIN) Matching Program*.

13 The TIN Matching Program provides a numerical response indicator for each match request. The potential responses include: '0' - Name/TIN combination matches IRS records; '1' - Missing TIN or TIN not 9-digit numeric; '2' - TIN not currently issued; '3' - Name/TIN combination does NOT match IRS records; '4' - Invalid request (*i.e.*, contains alphas, special characters); '5' - Duplicate request; '6' - (Matched on SSN), when the TIN type is (3), unknown, and a matching TIN and name control is found only on the NAP DM1 database; '7' - (Matched on EIN), when the TIN type is (3), unknown, and a matching TIN and name control is found only on the EIN N/C database; '8' - (Matched on SSN and EIN), when the TIN type is (3), unknown, and a matching TIN and name control is found on both the NAP DM1 and the EIN N/C databases. IRS Pub. 2108A, *On-line Taxpayer Identification Number (TIN) Matching Program* § 14, FAQ-9 at 9.

14 See IRC § 6103. See also National Taxpayer Advocate 2003 Annual Report to Congress 232 (Legislative Recommendation: *Confidentiality and Disclosure of Returns and Return Information*). Third-party payors and their authorized agents who participate in the TIN Matching Program must sign an on-line Terms of Agreement (TOA) clause stating they will attempt to match name/TIN combinations only for the types of reportable payments listed in Rev. Proc. 2003-9. IRS Pub. 2108A, *On-line Taxpayer Identification Number (TIN) Matching Program* § 4.3 at 4.

## EXPLANATION OF RECOMMENDATION

In general, information returns allow the IRS to cross-check taxpayer claims against third-party reports. In the case of education credits and deductions that depend on tuition paid, Form 1098-T may facilitate tax administration.<sup>15</sup>

In 2011, the Treasury Inspector General for Tax Administration (TIGTA) published an audit report concerning Form 1098-T in the context of apparently erroneous education credits.<sup>16</sup> According to the report, based in part on analysis of Forms 1098-T, 2.1 million individuals received potentially erroneous education credits because they:

- Did not attend an eligible educational institution;
- Attended less than half time or were graduate students;
- Were dependents on another taxpayer's return; or
- Were incarcerated.<sup>17</sup>

In response to the report, the IRS observed that

there are legitimate reasons why the information on the Form 1098-T could be different from the amount of credit allowed to the taxpayer. For example, timing differences can occur that will cause the reporting of all expenses on Form 1098-T in one year, when the student is required to claim the credit over two tax years. In addition, students whose tuition was fully paid through scholarships would not receive Form 1098-T, although they may have related expenses, such as course materials not purchased through the educational institution, which would qualify for the credit.<sup>18</sup>

Nevertheless, the IRS agreed with TIGTA's recommendation to "systemically identify and reject documents using incorrect coding on Form 1098-T for TY 2011" and to "identify educational institutions that are preparing inaccurate Forms 1098-T and then determine the appropriate treatment."<sup>19</sup>

Since enactment over the past decade and a half, the tax statutes have required a TIN on Form 1098-T, to match against claimed education credits and deductions.<sup>20</sup> Because the IRS TIN Matching program is not available for filers of Form 1098-T, colleges essentially must await a penalty notice to discover that a student has supplied an inaccurate number.<sup>21</sup> By extending TIN Matching to Form 1098-T, the recommendation reduces unnecessary burden and work for eligible educational institutions, the IRS, and taxpayers.

15 As stated above, IRC § 6050S(b)(2)(B)(i) permits reporting either payments received or amounts billed. To the extent that Form 1098-T reports not tuition paid but amounts billed, its utility may be limited.

16 See TIGTA, Ref. No. 2011-41-083, *Recovery Act: Billions of Dollars in Education Credits Appear to Be Erroneous* (Sept. 16, 2011).

17 See *id.* at 3 (relating to TY 2009 through May 28, 2010).

18 TIGTA, Ref. No. 2011-41-083, *Recovery Act: Billions of Dollars in Education Credits Appear to Be Erroneous* at 34 (IRS response).

19 *Id.* at 14.

20 See IRC §§ 25A(g) & 6050S(b), enacted by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, §§ 201 & 202, 111 Stat. 788, 799-809 (Aug. 5, 1997); IRC § 222, enacted by the Econ. Growth & Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 431, 115 Stat. 38, 66 (June 7, 2001).

21 On Dec. 17, 2013, the IRS stated that for "tax year 2011, the IRS introduced Forms ... 1098-T ... into the penalty notice program. \* \* \* in the interest of providing good customer service and encouraging voluntary compliance, the IRS will waive penalties associated with Forms 1098-T ... for this introductory year." Servicewide Electronic Research Program (SERP) Alert No. 13A0623.