

HIGHER EDUCATION

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A L E R T

OBTAINING RELIEF FROM PENALTIES RELATED TO IRS FORM 1098-T FILING DEFICIENCIES

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It has been reported that many colleges and universities have received IRS Notices assessing significant penalties for failing to provide accurate or complete information on IRS Forms 1098-T. Going forward, colleges and universities may be able to take advantage of a safe harbor included in recently enacted trade legislation to avoid penalties for failing to properly report student taxpayer ID numbers (TIN). It remains uncertain how the IRS proposes to respond to requests for abatement of penalties assessed for deficiencies in prior year filings of such forms.

Internal Revenue Code Section 6050S requires a college or a university to provide annually to a taxpayer and to submit to the IRS a Form 1098-T to report payments received or billed in connection with qualified tuition and related expenses. The information is provided to assist applicable taxpayers and the IRS in determining a taxpayer's eligibility for education tax credits, such as the Hope Credit and Lifetime Learning Credit. Penalties may be imposed, in an amount of up to \$100 per deficiency, for a total of \$200 for each IRS Form 1098-T that contains a missing or incorrect TIN.

In 2013, the IRS began sending penalty notices to colleges and universities that filed 2011 Forms 1098-T with missing or incorrect TINs. While Forms 1098-T must include the name, address and TIN of the student, schools face challenges in obtaining and reporting an accurate student TIN on the

Form. In some instances, schools are not able to obtain a TIN from a student, or the school may unknowingly receive an incorrect TIN.

When schools and their advisers expressed concern about the penalty notice implementation relating to 2011 Forms 1098-T, the IRS announced in 2014 that it would waive penalties associated with the Form for the 2011 tax year only. Since then, the IRS has issued penalty notices to numerous colleges and universities for 2012 and 2013 Forms 1098-T.

Relief is in sight from such penalties imposed on educational institutions for failing to correctly report a student's taxpayer identification number on Forms 1098-T filed after December 31, 2015. The Trade Preferences Extension Act of 2015 (Pub. L. No. 114-27) includes a safe harbor provision for eligible educational institutions receiving a penalty notice related to certain deficiencies on Forms 1098-T for 2015 and later years. The Act indicates that penalties under Code Sections 6721 and 6722 will not apply to educational institutions that fail to report a student TIN on Form 1098-T, Tuition Statement, provided certain assurances are properly made. To qualify for relief a school must make a contemporaneous, true and accurate certification under penalty of perjury that it has complied with the standards to be promulgated by the Treasury Secretary for soliciting and obtaining the student's TIN. Under current IRS rules, a school

is considered to have acted in a reasonable manner if it solicits a TIN at least once annually from a student to whom it is required to provide a Form 1098-T. The safe harbor provision provided by the Act will be effective for information required to be furnished in connection with Forms 1098-T for 2015 and years thereafter. It provides potential relief in situations where, notwithstanding an annual TIN solicitation, a college or university is not able to obtain an accurate student TIN. However, it is unclear as to whether the Act will apply to missing and incorrect TINs on Forms 1098-T, or be narrowly interpreted to apply only to the forms that fail to contain a student TIN. Questions also remain about how Forms 1098-T for the 2012-2014 tax years will be addressed. To date, there has been no indication that the IRS is prepared to provide blanket waivers of such penalties assessed for 2012, 2013 or 2014.

Providing documentation may be critical to substantiating a claim for and obtaining abatement of such penalties. It has been reported that many colleges and universities that received a penalty notice for missing or incorrect TINs on 2012 Forms 1098-T and subsequently requested an abatement of those penalties have been required to provide sample student TIN solicitation forms to the IRS. It is recommended that institutions be diligent in TIN collection efforts and engage in best practices to file complete and accurate Forms 1098-T. Such efforts should include maintaining accurate and complete records of the procedures used to solicit TINs from students, including samples of the forms provided to students for these purposes.

The lawyers identified below in the Higher Education Practice Group of Schnader Harrison Segal & Lewis are knowledgeable about such matters and are available to provide additional information and assistance in connection with responding to penalties assessed in connection with IRS Form 1098-T filings and other matters regarding a college's or university's IRS filing and reporting duties and responsibilities. ♦

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