FEDERAL TAX NEWS
for Colleges and Universities

In This Issue

NEWS ALERT

As *FTN* went to press, the IRS announced that for calendar year 2015 it will not impose penalties on an institution if it fails to include a student's correct taxpayer identification number on a timely filed Form 1098-T. See http://tinyurl.com/gs5u787.

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Congress Eliminates Box 2 From Form 1098-T; Other Provisions Extended

As has become an annual practice, Congress in mid-December passed, and President Obama signed on Dec. 18, the Consolidated Appropriations Act of 2016 (Pub. L. 114-113), an omnibus spending bill that includes a number of tax provisions affecting colleges and universities.

Changes to Form 1098-T. Starting with the 2016 tax year (to be filed in 2017), colleges and universities will no longer have the option to report amounts *billed* for qualified tuition and related expenses in Box 2 on Form 1098-T for education furnished in academic periods beginning after Dec. 31, 2015. Institutions will only have the option of reporting payments *received* for qualified tuition and related expenses in Box 1 of the form. While Box 1 reporting has existed as an option for many years, most schools have opted to report amounts billed (Box 2) instead because it is difficult to calculate payments received for qualified tuition and related expenses on a calendar-year basis when tuition is billed and paid on an academic-year basis. For example, institutions often receive payments that are not tied to particular amounts billed or payments in one calendar year for classes beginning the following year. Financial aid may further complicate the picture if it is awarded in a different calendar year (but same academic year) from the year of the payment. As this change in law will require most colleges and universities to change their payment tracking systems, it would be appropriate for the IRS to defer implementation. NACUBO is seeking a one-year delay of implementation and is advocating for clarity in future IRS guidance to address the concerns related to Box 1 reporting.

continued on p. 3

IRS Radically Shifts Reporting Obligations For Schedule L in the 2014 Form 990

Special Report by Stephen Clarke, Executive Director, Exempt Organizations Business Tax Services, Ernst & Young LLP

Recent changes to the IRS instructions for the reporting of business transactions with interested persons on Form 990, Schedule L could significantly increase (or decrease) the number of transactions that a college or university must report on Schedule L, depending on whether it conducts transactions with substantial contributors reported on Form 990, Schedule B.

The IRS added Schedule L, Transactions with Interested Persons, to Form 990, the annual information return filed by tax-exempt organizations, beginning for tax year 2008. This schedule is designed to capture information on excess benefit transactions, loans, grants, and other assistance to interested persons as well as business transactions with them. Until recently, each of the four sections of Schedule L had a different definition of "interested person" that reflected the different purposes for each section. In response to comments that these divergent definitions of interested persons were inconsistent and confusing, the IRS harmonized the definition of interested person for Sched-

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ule L, Parts II-IV for tax year 2014 (it retained the separate Part I definition of interested person to reflect the statutory definition of "disqualified person" for excess benefit transaction purposes under IRC §4958). Evoking the maxim, "Be careful what you ask for," the IRS provided relief with one hand and retracted with the other, eliminating certain reportable transactions while creating new reporting obligations.

Revises 'Interested Person" Definitions

The IRS provided significant relief by eliminating from the definition of "interested person" an entity of which an officer, director, trustee, or key employee (ODTKE) of the filing organization, or any family member thereof, was a director, officer, or trustee, or a partner, member, or shareholder with an ownership interest in excess of 5%. This change allows exempt organizations to avoid reporting business transactions with another organization simply because one of its ODTKEs (or any family member) is an officer, director, trustee, or a less-than-35% owner of that other organization. An entity in which ODTKEs and their family members collectively hold a greater than 35% ownership, profits, or beneficial interest ("35% controlled entity") is an interested person for purposes of Schedule L, though such 35% controlled entities do not include nonstock corporations.

However, the IRS expanded the definition of "interested person" in Schedule L, Part II (Loans to and/or from Interested Persons) and Part IV (Business Transactions with Interested Persons) to include a "substantial contributor": an individual or organization (other than 501(c)(3) organizations and government units) that is required to be reported as a contributor on that tax year's Form 990, Schedule B, Contributors. For an organization that reports many contributors on Schedule B — for instance, a college that does not meet the public support test described in IRC §170(b)(1)(A)(vi) or complete Schedule A, Part II, and therefore doesn't qualify to use the greater-than-2%-or-$5,000 threshold for reporting contributors (see *Federal Tax News for Colleges and Universities*, March 2015) — this new requirement could impose a substantial burden. Form 990 instructions require an organization to make a reasonable effort (e.g., distributing a questionnaire to interested persons) to obtain information needed from them to answer certain questions. Afraid to look a gift horse in the mouth, however, many exempt organizations are not comfortable asking their contributors to complete such a questionnaire. Although filers have flexibility in determining what "reasonable efforts" to use in obtaining information on reportable transactions involving substantial contributors, many are struggling to determine how to obtain this information by some means other than a questionnaire.

Change Raises Confidentiality Concerns

Organizations also are concerned about a possible breach in confidentiality of donor information if they report persons by name on Schedule L as substantial contributors. IRC §6104(b) requires the IRS to disclose Forms 990 to the public but prohibits the IRS from disclosing the names or addresses of any persons reported as contributors on Form 990. To comply with this rule, the IRS redacts contributors' names and addresses from public disclosure versions of Form 990, Schedule B. Similarly, since the advent of Schedule L for tax year 2008, the IRS has allowed filers to identify substantial contributors to whom they made grants as "substantial contributors," rather than by name, in Schedule L, Part III (Grants or Assistance Benefitting Interested Persons). But when the IRS added substantial contributors as a category of interested persons for the 2014 Schedule L, Parts II and IV, it did not include the same exception for those parts, perhaps inadvertently. Because it is unlikely the IRS

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would be able to redact substantial contributor names from Schedule L, these names likely would be included on the version of that Schedule L that the IRS distributes to the public.

Another confusing Schedule L-related anomaly is that the IRS has not yet updated the Form 990 trigger questions (Part IV, lines 25-28) for determining whether an organization must file Schedule L. Thus, Form 990 lacks a trigger question asking if the filer engaged in a transaction with a substantial contributor. If the only reason an organization would complete Schedule L is to report a transaction with a substantial contributor, and the organization answers "No" to lines 25-28, software limitations likely would prevent it from being able to e-file Schedule L. But if it answered "Yes" to such questions it could be reporting inaccurately. It is unclear how a filer should answer these questions in that scenario.

Multiple commenters have asked the IRS to eliminate "substantial contributors" from the definition of interested persons in Schedule L. The IRS has indicated that it did not anticipate the extent of the reporting burden resulting from its revision and is considering further revisions. In the meantime, Form 990 filers are required to follow the revised Schedule L instructions for tax year 2014, making reasonable efforts to identify and report transactions with substantial contributors on Schedule L. It is advisable for Form 990 filers that may need to report such transactions to consult with their tax advisors and document their reasonable efforts. ✧

Prior to joining Ernst & Young, Mr. Clarke worked at the IRS as Project Manager in the Office of the Director of Exempt Organizations. Mr. Clarke was extensively involved in the development and revisions to IRS Form 990. Mr. Clarke can be reached at stephen.clarke@ey.com.

Tax Extenders Finalized

continued from p. 1

Permanent extension of the expanded American Opportunity Tax Credit (AOTC). The AOTC provides a tax credit of up to $2,500 for four years of postsecondary education. Phase-out amounts for the limitations on adjusted gross income (AGI) are $80,000 (for single filers) and $160,000 (for those married filing jointly) for 2016.

Prevention of retroactive claims of AOTC. Taxpayers also are prohibited from retroactively claiming the AOTC by amending a return (or filing an original return if he or she failed to file) for any year if the taxpayer identification number of the student for whom the credit is claimed was issued after the due date of the return. The provision applies to returns, and any amendment or supplement to a return, filed after the date of enactment. This primarily impacts nonresident alien students who do not have taxpayer identification numbers prior to the tax filing deadline.

Extension of the above-the-line tuition deduction. The provision extends through 2016 the above-the-line deduction for tuition and related expenses for higher education. For taxpayers whose AGI does not exceed $65,000 ($130,000 for joint filers), the deduction is capped at $4,000. For taxpayers whose AGI does not exceed $80,000 ($160,000 for joint filers), the cap is $2,000.

Improvements to Section 529 tuition savings accounts. The definition of qualified higher education expenses for which tax-deferred distributions from 529 accounts are eligible is expanded to include computer equipment and technology. The provision treats a refund of tuition paid with amounts distributed from a 529 account as a qualified expense if such amounts are re-contributed into a 529 account within 60 days.

ACA "Cadillac Tax" delayed until 2020. Originally scheduled to take effect for tax years beginning after Dec. 31, 2017, "the Cadillac Tax" will now be applicable for tax years beginning after Dec. 31, 2019. The new law further specifies that any excise tax paid will be deductible. The excise tax is equal to 40% of the "excess benefit" provided to employees each month. The "excess benefit" is determined by comparing the aggregate cost of the employer-sponsored coverage provided to the employee for the month and the amount equal to 1/12th of the annual limit that the IRS establishes for the calendar year in which the month occurs.

ACA Reporting Deadlines Extended

The IRS recently published Notice 2016-4, which postpones the due dates for the 2015 information reporting requirements implemented as part of the Affordable Care Act for large employers as follows:

◆ The due date for furnishing the 2015 Form 1095-B, Health Coverage and the 2015 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage is extended from Feb. 1 until March 31, 2016, and

◆ The due date for filing with the IRS the 2015 Form 1094-B, Transmittal of Health Coverage Information Returns, and the 2015 Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, is extended from Feb. 29 until May 31, 2016, if not filing electronically, and from March 31 until June 30 if filing electronically.

Link: http://tinyurl.com/gsex533

Accelerated IRS filing dates for Forms W-2 and 1099-MISC. Employers will now need to file these information returns with the IRS by the same date as they are required to furnish them to employees and other payees: Jan. 31. There is no extended filing deadline for electronically filed forms. This provision is effective for 2016 forms to be filed by Jan. 31, 2017.

Permanent extension of mass transit commuter tax parity. The provision permanently extends the maximum monthly exclusion amount for transit passes and van pool benefits so that these transportation benefits match the exclusion for qualified parking benefits. The amendment is effective retroactively to Jan. 1, 2015. For 2016, the qualified parking amount is $255.

Safe harbor for *de minimis* errors on information returns and payee statements. The provision establishes a safe harbor from penalties for the failure to file correct information returns and for failure to furnish correct payee statements by providing that if the error is $100 or less (or $25 or less in the case of errors involving tax withholding), the issuer of the information return is not required to file a corrected return, and no penalty is imposed. A recipient of such a return (e.g., an employee who receives a Form W-2) may elect to have a corrected return issued and filed with the IRS. The provision is effective for returns and statements required to be filed after Dec. 31, 2016.

Permanent extension of tax-free distributions from Individual Retirement Accounts for charitable purposes. The provision permanently allows individuals at least 70½ years of age to make tax-free donations from IRAs to charities, including colleges and universities. The IRA charitable rollover distribution may not exceed $100,000 per taxpayer in any tax year.

Permanent extension of the modification of tax treatment of payments to controlling exempt organizations. A special rule applicable to certain binding written contracts in effect on Aug. 17, 2006, has been made permanent. The special rule permits an exempt organization to receive payments of interest, annuities, rents, and royalties from a controlled taxable organization without recognizing unrelated business taxable income to the extent that the payments do not exceed fair market value.

The text of the law is available at the following address: https://www.congress.gov/114/bills/hr2029/BILLS-114hr2029enr.pdf.

Further information on the law can be found on NACUBO's website, http://tinyurl.com/zoqfyqn. ✧

Recent Developments

Live links to the cited documents are posted on www.FederalTaxIssues.com under "Links in the News."

◆ **CRS publishes report on tax policy options regarding college and university endowments.** The Congressional Research Service (CRS) recently published a report on tax policy options related to college and university endowments. The report, dated Dec. 2, 2015, discusses imposing minimum payout rates on endowments, imposing a tax on endowments or endowment earnings, limiting charitable contribution deductions for certain gifts to endowments, and changing the tax treatment of certain offshore investments strategies that use blocker corporations related to unrelated business income tax planning. **Link:** https://www.fas.org/sgp/crs/misc/R44293.pdf.

◆ **IRS to Consider Removing Form 990 Requirement to Disclose Donors (Schedule B).** On Dec. 1, 2015, at a program on exempt organizations at the Urban Institute, a top IRS official on exempt organizations stated that the IRS is considering elimination of the donor information provided in Schedule B of Form 990. Currently, Form 990 filers are required to provide donor information to the IRS, but not the public, on the schedule. Specifically, the name, contact information, amount of donation, and type of donation (cash, other property, personal donation, or donation from payroll) from significant donors are generally required. Forms 990 available to the public are not required to include identifying information in Schedule B; only the amount of the donation and the type of the donation appear in the public disclosure copy of Form 990. Tammy Ripperda, director of the Exempt Organizations division, said that the IRS is looking at the public policy considerations associated with the possibility of eliminating Schedule B with a focus on whether Schedule B is important for federal tax law enforcement purposes. Additionally, Ms. Ripperda indicated that given its limited resources, the IRS needs to consider what is the minimum information necessary to enforce the law and whether requesting information beyond that may be viewed as a waste of these limited resources. Ms. Ripperda added that the IRS was discussing the idea with state regulators, as many such regulators have an interest in Schedule B information. Reform groups, such as Public Citizen, have voiced concern about the elimination of Schedule B in response to Ms. Ripperda's comments.