



September 29, 2010

CC:PA:LPD:PR  
Courier's Desk  
Attn: Mr. Keith Brau  
Internal Revenue Service,  
1111 Constitution Avenue NW,  
Washington, DC  
[Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov).

Re: **Notice 2010-51**

Dear Mr. Brau:

On behalf of the National Association of College and University Business Officers (NACUBO), and the associations listed below, we submit the following comments in response to Notice 2010-51. The notice seeks input from the regulated community related to implementation of new information reporting requirements under Internal Revenue Code (IRC) Section 6041 which expands existing reporting requirements to apply to payments made to corporations and to include certain payments of gross proceeds with respect to goods and other property.<sup>1</sup> These new reporting requirements apply to payments made after December 31, 2011.

NACUBO is a nonprofit professional organization representing chief financial and administrative officers at more than 2,000 colleges and universities. We support repeal of the new requirements due to the vast additional administrative and financial burdens they impose on colleges and universities. While we seek legislative relief from the requirements under the recently expanded section 6041, we respectfully submit the following comments as the Service considers implementation of the new rules.

**Proposed Regulations on Payment Card Transactions.** We appreciate and wholeheartedly support the position put forth by the Treasury Department and the Internal Revenue Service to avoid duplicate reporting of payment card transactions. The proposed regulations for IRC Section 6050W currently require banks and other payment processors to report payment card transactions on Form 1099-K.<sup>2</sup> In order to ease administrative burdens, however, these regulations specifically provide that such transactions are not required to be reported under IRC Section 6041.<sup>3</sup>

The proposed regulations are expected to be finalized in the near future.

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<sup>1</sup> Section 9006 of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (the Act).

<sup>2</sup> REG-139255-08 December 7, 2009.

<sup>3</sup> REG-139255-08 includes the following proposed amendment to Section 1.6041-1(a)(1)(iv): "Payment card transactions that are described in paragraph (a)(1)(ii) of this section that otherwise would be reportable under both sections 6041 and 6050W are reported under section 6050W and not section 6041".

**Government Entities, Land-Grant Institutions, and Community Colleges.** We request clarification that all colleges and universities be expressly exempted from receiving Forms 1099 under IRC Section 6041. The existing regulations make a broad exemption for payments to exempt organizations and governmental entities from reporting under section 6041.<sup>4</sup> The rationale is that issuing a Form 1099 to exempt organizations is unnecessary because they are generally excluded from income tax. However, as written, the new IRC Section 6041(h) appears to limit this exception to organizations that are “exempt from tax under section 501(a).” While likely unintended, that wording could be interpreted as not applying to state higher education institutions. However, it makes sense to exclude them as well since, like private institutions, they are generally exempt from income tax. To ensure clarity for payers/filers, the regulations should specify that all payments to nonprofit and public institutions of higher education are excluded from the reporting requirement.

**Course Material Buyback Programs.** We request clarification that students and individuals participating in course material buyback programs be expressly exempt from receiving Forms 1099 under IRC Section 6041. The primary supplier of used textbooks at colleges and universities are individual students who sell some or all of the materials back to their college bookstore at the end of the term. While only a minority of students would likely meet the threshold, institutions and their college bookstores would have no other choice but to collect social security numbers and address information from students who sell their textbooks back to a college bookstore. This would greatly reduce the efficiency of buyback programs and students’ willingness to participate in such programs—reducing the availability of lower cost course materials at colleges and universities. The potential data collection further raises serious concerns with the security of such sensitive information from students. Encouraging a strong used book market is an underlying theme in the Higher Education Opportunity Act and many state textbook affordability laws, so unless exempted, the 1099 provision seems counterproductive.

**Amounts in Consideration for Property and Other Gross Proceeds.** As noted in the August 6 Congressional Research Service report, IRC § 6041(a) identifies types of payments that can trigger information reporting requirements. For payments made before January 1, 2012, these include “rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income.” If the aggregate amount of these payments to a single payee equals \$600 or more, then IRC § 6041(a) requires the payer to report the amount of those payments and the identity of the payee to the IRS. For payments made after December 31, 2011, PPACA § 9006 amended this list of payments to include “amounts in consideration for property” and other “gross proceeds.”<sup>5</sup>

This expansion of the categories of payments to be reported means that Forms 1099 will need to be generated for payments that previously were not subject to reporting. For example, payments for merchandise, telegrams, telephone, freight, and storage have been exempt from reporting. However, those payments may be deemed amounts in consideration for property or gross proceeds under the new rules and could potentially be subject to reporting. We strongly urge the Service to

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<sup>4</sup> See Treas. Reg. §1.6041-3(p).

<sup>5</sup> Liu, Edward C., and Petit, Carol A., *Form 1099 Information Reporting Requirements as Modified by the Patient Protection and Affordable Care Act*, Congressional Research Service, August 6, 2010.

clearly define which types of these previously exempt payments will be subject to reporting under the new rules.

**Delay of Implementation Date.** We request that these new reporting requirements be postponed for one year for reporting the payment of services to corporations and three years for reporting the purchase of goods and other property. The additional time will help college and university administrators, some already operating under painful financial and staffing constraints; avoid an administrative ‘crunch’ aimed at gathering substantial amounts of information in a relatively short amount of time. Postponement of the effective date, giving institutions adequate time to implement sound compliance measures, will go a long way toward ensuring that the information collected is accurate and reliable.

For instance, the new rules will result in the number of corporate vendors needing to receive Forms 1099 in any given university database to more than double and, in some cases, quadruple. Annual turnover of institutional vendors is generally minimal. To meet pending implementation deadlines, institutions will need to solicit a large volume of Forms W-9, Request for Taxpayer Identification Number (TIN) and Certification, from existing vendors in a little more than twelve months. Previously they have had a twelve-month period to solicit these forms from a small group of new vendors that these schools hire each year.

Further, colleges and universities need to run TIN matching on additional vendors and update vendor records; manage the switchover from 2011 to 2012 rules at December 31, 2011; develop programs to facilitate the increased complexity of invoice data entries; ensure that goods and services are properly classified; handle inquiries from vendors receiving Forms 1099 who have never received them before and from vendors who do not understand the amounts reported as goods from services; and minimize the increased volume of back-up withholding notices or b-notices.

Please note that higher education institutions, in particular small colleges, will incur significant financial costs at a time when they are already facing increasing budget cuts each year. Additional time will enable these institutions to manage the process efficiently as well as minimize the financial impact of implementation.

**Threshold for Goods and Other Property.** We request that the threshold for goods and other property be increased substantially beyond the \$600 threshold that is used for services in an effort to avoid duplicative efforts. Trades and businesses use reliable and generally accepted accounting principles and procedures to verify and account for the sales of property. In fact, annual income tax forms for any and all entities require reconciliations of costs of goods sold which demonstrates appropriate inventory controls. Establishing a higher threshold would significantly lower the administrative burden to all taxpayers. We recommend a threshold of \$5,000.

**Consent to Electronic Filing.** We request that corporate vendors and vendors of goods and other property be given the opportunity to receive the Form 1099 electronically, foregoing hard copies. As mentioned, the volume of forms that will need to be processed will increase dramatically under the new rules, bringing unforeseen hikes to delivery costs. Most, if not all, vendors have the appropriate technological means by which to accept this information, and the vendors’ interest is

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not harmed since they must give their consent prospectively. We recommend that the vendors provide their consent either in a legal contract or similar acknowledgement.

NACUBO is grateful for the opportunity to provide comments to Notice 2010-51. Please contact Mary Bachinger on my staff if you have any questions at 202-861-2581.

Sincerely,

A handwritten signature in black ink, appearing to read "John Walda". The signature is fluid and cursive, with a large loop at the beginning.

John Walda

President and Chief Executive Officer

cc: NACUBO Tax Council

The following associations join NACUBO in this statement:

- American Association of Community Colleges
- American Association of State Colleges and Universities
- American Council on Education
- Association of American Universities
- Association of Public and Land-grant Universities
- National Association of College Stores
- National Association of Independent Colleges and Universities