

Memorandum  
October 23, 2018

To: Ross Laughead

From: Bob Werner

Re: Taxation of Emergency Support

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You raised a couple of questions. One concerned emergency payments to students, and the second concerned IRS Form 1098-T reporting.

As discussed below, the payments in question are not taxable. Additionally even if they were taxable, they are neither reportable on Form 1098-T nor are they reportable on Form 1099 for annual cumulative payments per student less than \$600.

**Taxation of Emergency Gifts.** After we discussed the general rules for taxation of emergency support payments provided to students, I looked in to the general income tax consideration of the payments. As discussed below, the combination of relationship and donative intent make the payments received by the students non-taxable. In the case of non-scholarship-based support to such individuals, the benefits are also non-taxable. In the absence of scholarship-based reporting, no reporting is required for gifts that are less than the annual gift tax exclusion amount, currently \$15,000.

For the purpose of this memorandum, a “scholarship” is a grant or payment made to support a student’s education, generally awarded on the basis of academic or other achievement. An ad hoc payment administered outside your normal scholarship guidelines for the equivalent of public “assistance” is not a scholarship or grant. While your “assistance” program will have an applicable process, you will find a similar application process at USA.gov under Help with Bills. In administering any program, you should consider eligibility standards (i.e. make 135% or less than the federal poverty guidelines or participate in Medicaid, Supplemental Nutrition Assistance (food stamps or SNAP), Supplemental Security Income, Federal Public Housing Assistance (Section 8) or Head Start) and an application process.

To constitute a gift for purposes of federal tax law, a transfer of money or property must be made out of a feeling of disinterested generosity. The payment must be in the nature of “something for nothing.” It is not a gift if the payment is a reward for services rendered or under a scholarship/grant program. With regard to payments made by an individual or organization to a student without an ACCD employment relationship or related to a scholarship/grant program, it is difficult to think of a reason why the payment would be taxable.

All of the facts and circumstances must be considered concerning a payment. Where all of these factors are present to classify a payment as a gift:

1. The payment is made free from compulsion;
2. The giver has the unrestricted right to determine the amount;

3. The payment is not the subject of negotiation by the student; and
4. The giver has the right to determine who receives the payment.

In the event the payments are “scholarship” payments, amounts used for incidental expenses, such as room/board and travel are gross income.

**Form 1098-T.** The IRS Form 1098-T is used to track student qualification for various education related tax credits or deductions. Depending on the amounts received and used for qualified tuition and related fees, there may be a taxable component appearing on the form.

A Form 1098-T is used to report any “reportable transaction,” and all educational institutions, including ACCD, are required to issue the form to students. A reportable transaction is defined as qualified tuition and related fees a student must pay to be enrolled in a degree seeking program. Qualified tuition and related expenses are tuition, fees, and course materials required for a student to be enrolled at or attend an eligible educational institution.

Please note that to the extent that ACCD is making “gifts” to students for “books,” a gift for books may sound like a scholarship payment, which should be reported as such.

If the student’s scholarship is less than or equal to the qualified tuition and related fees, no part of the scholarship is taxable. If the amount exceeds such expenses, the excess is taxable, subject to applicable filing requirements. Finally, it is possible that part of a scholarship may be taxed as self-employment income on the student’s personal tax return, but since ACCD will not have an employer/employee relationship generating the scholarship payment, ACCD has no additional reporting requirement beyond the Form 1098-T. Specifically, it will have no duty to withhold employment taxes.

ACCD is not required to provide Form 1098-T for courses for which no academic credit is offered, even if the student is enrolled in a degree program; nonresident alien students without Social Security Numbers or students whose qualified tuition and related expenses are entirely waived or paid entirely with scholarships or grants.

Ideally, I would refer to the payments as “payment” as opposed to “grant” in all places in the program guidelines.