



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 53, 54, and 301

[TD 9972]

RIN 1545-BN36

### Electronic-Filing Requirements for Specified Returns and Other Documents

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations amending the rules for filing electronically and affects persons required to file partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The final regulations reflect changes made by the Taxpayer First Act (TFA) and are consistent with the TFA's emphasis on increasing electronic filing.

**DATES:** *Effective date:* These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Applicability dates:* For dates of applicability, see §§1.1461-1(j), 1.1474-1(j), 1.6033-4(b), 1.6037-2(b), 1.6045-2(i), 1.6045-4(s), 1.6050I-1(h), 1.6050I-2(f), 1.6050M-1(f), 53.6011-1(e), 54.6011-3(f), 301.1474-1(e), 301.6011-2(g), 301.6011-3(f), 301.6011-5(f), 301.6011-10(c), 301.6011-11(e), 301.6011-12(f), 301.6011-13(f), 301.6011-14(f), 301.6011-15(f), 301.6012-2(f), 301.6033-4(d), 301.6037-2(f), 301.6057-3(f), 301.6058-2(f), 301.6059-2(e), and 301.6721-1(h).

**FOR FURTHER INFORMATION CONTACT:** Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317-6844 (not a toll-free

number). The phone number above may also be reached by individuals who are deaf or hard of hearing or who have speech disabilities through the Federal Relay Service toll-free at (800) 877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This document contains amendments to the Regulations on Income Taxes (26 CFR part 1) under sections 1461 and 1474 of the Internal Revenue Code (Code), which provide that persons required to deduct and withhold tax are liable for such tax; under sections 6045 and 6050M of the Code, which require persons to file and furnish certain information with respect to transactions and contracts; and under section 6050I of the Code, which requires persons to report information about financial transactions to the IRS; to the Regulations on Pension Excise Taxes (26 CFR part 54) under section 6011 of the Code, which requires persons to report information for certain excise taxes related to employee benefit plans; to the Regulations on Foundation and Similar Excise Taxes (26 CFR part 53) under section 6011 of the Code to remove the option—available to a person required to report certain excise taxes on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*—to designate a Form 4720 filed by a private foundation or trust as that person’s return if the foundation is reporting the same transaction; and to the Regulations on Procedure and Administration (26 CFR part 301) under sections 1474, 6011, 6012, 6033, 6057, 6058, and 6059 of the Code for determining whether returns must be filed using magnetic media (references to “electronic form” are used in place of “magnetic media”).

On July 1, 2019, the President signed into law the TFA, Public Law 116-25, 133 Stat. 981 (2019). Section 2301 of the TFA amended section 6011(e) by adding new paragraph 5 that authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations that decrease, in accordance with the TFA, the

number of returns a taxpayer may file without being required to file electronically. Section 3101 of the TFA amended section 6011 to require any charitable or other organization required to file an annual return that relates to any tax imposed by section 511 on unrelated business taxable income to file those returns in electronic form. Section 3101 of the TFA also amended section 6033 to require any organization required to file a return under section 6033 to file those returns in electronic form.

On July 23, 2021, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (NPRM) (REG-102951-16) in the **Federal Register** (86 FR 39910), providing guidance on the electronic-filing rules for partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. The 2021 proposed regulations also withdrew the proposed regulations published in the **Federal Register** on May 31, 2018, amending the rules for determining whether information returns must be filed electronically. The 2018 and 2021 proposed regulations are included in the rulemaking docket for this Treasury Decision on [www.regulations.gov](http://www.regulations.gov).

### **Summary of Comments and Explanation of Revisions**

The Treasury Department and the IRS received 22 comments in response to the proposed regulations. All comments were considered and are available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing was held on September 22, 2021. Three commenters testified at the public hearing. The comments that are within the scope of the regulations are summarized and discussed in this preamble.

After consideration of the comments, the Treasury Department and the IRS adopt the proposed regulations as revised by this Treasury Decision. To the extent not inconsistent with the Summary of Comments and Explanation of Revisions section of

this preamble, the Explanation of Provisions section of the preamble to the proposed regulations is incorporated in this document.

## I. The Applicability Date of the Final Regulations

### A. Applicable for Returns Required to be Filed in 2024

In general, the proposed regulations provide that the amended electronic-filing rules would be applicable to returns required to be filed during calendar years beginning after the date of publication of the Treasury Decision in the **Federal Register**. The proposed regulations provide for other applicability dates depending on the filing requirements for specific tax forms. For example, the proposed regulations provide that the changes to the electronic-filing rules would apply to returns required to be filed under §301.6058-2 for plan years that begin on or after January 1, 2022, but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022.

The majority of commenters recommended delaying the applicability of the proposed changes by at least one calendar year to provide time for their customers to adjust inventories; for software companies to adjust their programming; for paper filers and the IRS to adjust their processes; and for the IRS to communicate the changes to the public. One commenter, a manufacturer and supplier of tax forms, expressed concern that the timing of the proposed changes would impose financial burdens on their customers, buyers, and resellers of tax forms, because planning and purchasing inventory had already begun when the proposed regulations were published. That commenter also was concerned that those filers needing a Transmitter Control Code (TCC), required for electronically filing most information returns, would not be able to obtain one for the 2022 filing season, because applications for a TCC were due by November 1, 2021. Another commenter, a seller of paper forms, similarly noted that demand for paper tax forms generally begins long before the filing season starts, and that tax professionals and suppliers had already begun ordering and shipping paper tax

forms for the 2022 filing season before the proposed regulations were published. The commenters also asserted that changes in the electronic-filing rules made near the start of filing season have a substantial impact on tax-software companies that must adjust their systems to comply with the changes.

Other commenters supported the IRS's efforts to modernize the return-filing process to require withholding agents to electronically file Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, and shared the IRS's desire to improve the timeliness and accuracy of refunds and credits claimed by foreign persons with amounts withheld. But they suggested that the IRS delay the applicability date of the proposed changes by at least one calendar year to provide time for the IRS and withholding agents to prepare for the electronic filing of Forms 1042. They requested that the IRS provide electronic-filing specifications for Forms 1042 as soon as possible, and once provided, allow additional time to create and test the required software.

The Treasury Department and the IRS understand the concerns raised by commenters with respect to applicability dates of the regulations contained in this Treasury Decision. The Treasury Department and the IRS believe that making the new provisions for electronic filing applicable to returns and other documents required to be filed during calendar year 2024 will give affected persons ample time to prepare. Accordingly, final regulations §§1.1461-1(j), 1.1474-1(j), 1.6037-2(b), 1.6045-2(i), 1.6045-4(s), 1.6050I-1(h), 1.6050I-2(f), 1.6050M-1(f)(4), 54.6011-3(f), 301.1474-1(e), 301.6011-2(g)(1), 301.6011-3(f), 301.6011-5(f), 301.6011-11(e), 301.6011-12(f), 301.6011-13(f), 301.6011-14(f), 301.6011-15(f), 301.6012-2(f), 301.6037-2(f), and 301.6721-1(h) provide that the new provisions for electronic filing will apply for returns and other documents required to be filed during calendar year 2024. Sections 301.6057-3(f), 301.6058-2(f), 301.6059-2(e) provide that the new provisions for

electronic filing will apply for plan years that begin on or after January 1, 2024. To avoid partial retroactive effect with respect to certain non-calendar-year taxpayers, final regulations §§301.6011-12(f), 301.6011-13(f), and 301.6012-2(f) specify that these provisions apply to returns required to be filed for taxable years ending on or after December 31, 2023. In light of the applicability dates, the language “but only for filings with a filing deadline (not taking into account extensions) after July 31, 2022” that was included in proposed §§301.6057-3(f), 301.6058-2(f), and 301.6059-2(e) has been removed from the final regulations.

#### B. Applicability date for forms under section 3101 of the TFA

Section 3101 of the TFA amended section 6011 of the Code to require any organization required to file an annual return that relates to any tax imposed by section 511 on unrelated business taxable income to file the return in electronic form. Section 3101 of the TFA also amended section 6033 to require any organization required to file a return under section 6033 to file the return in electronic form. Unlike section 2301 of the TFA, the provisions in section 3101 of the TFA are self-executing and generally apply to taxable years beginning after July 1, 2019, in accordance with section 3101(d) of the TFA. The applicability date of final regulations §§1.6033-4(b), 53.6011-1(e), 301.6011-10(c), and 301.6033-4(d) (returns required to be filed during calendar years beginning after the date of publication of the Treasury Decision in the **Federal Register**) does not affect the requirements under section 3101 of the TFA.

### II. The Electronic-Filing Rules for Information Returns

#### A. The electronic-filing threshold

Proposed §301.6011-2(b) and (c) provide that if a person is required to file, during calendar year 2022, a total of at least 100 information returns covered by §301.6011-2(b)(1) and (2), and during calendar years 2023 and after, a total of at least 10 such returns, the person is required to file those information returns electronically

(electronic-filing threshold for information returns). Because these final regulations are not applicable until calendar year 2024, the proposed electronic-filing thresholds of 100 for returns required to be filed in calendar year 2022, and 10 returns for returns required to be filed in calendar year 2023 are not adopted. The electronic-filing threshold for returns required to be filed in calendar years 2022 and 2023 remains at 250. The final regulations adopt, however, the proposed electronic-filing threshold of 10 for returns required to be filed on or after January 1, 2024, as authorized by Congress's enactment of section 2301 of the TFA.

Two commenters disagreed with the proposed reduction to 10 returns for small businesses. Both questioned the need for an electronic-filing rule at all and suggested that businesses should be afforded flexibility in how they file their returns, rather than be required to file returns electronically when they have filed paper returns for years. The first commenter supported the proposed reduction of the electronic-filing threshold for information returns from 250 to 100 returns but disagreed with the proposed reduction to 10 returns because it was "unnecessary and lacks empathy for the challenges facing small businesses." The second believed that any reduction to the electronic-filing threshold should be a small, gradual reduction and added that some small businesses have little to no understanding of the Internet and requiring these filers to electronically file their returns would be challenging.

The Treasury Department and the IRS disagree with the commenters' suggestions because electronic filing has become more common, accessible, and economical, as evidenced by the prevalence of tax-return preparers and third-party service providers who offer return-preparation and electronic-filing services; by the availability of tax-return-preparation software; and by the numbers of returns already being filed electronically on a voluntary basis. Although the Treasury Department and the IRS understand that these changes to the electronic-filing requirements may

constitute a burden in the short term for some filers, the final regulations do not adopt these comments. To address any undue hardship that these changes to the electronic-filing rules may have on certain small businesses that are paper information-return filers, the IRS will continue to grant hardship waivers fairly and consistently and to grant reasonable-cause relief from penalties for failure to file returns electronically in appropriate cases. Additionally, the Treasury Department and the IRS expect the administrative costs to electronically file returns to be further reduced for taxable year 2022 and later years with the launch of the Information Returns Intake System (IRIS) Taxpayer Portal, an internet platform for Form 1099 filings.

B. Filing corrected information returns in same manner as originals

Proposed §301.6011-2(c)(4)(ii) provides a rule for the manner of filing corrected returns. Proposed §301.6011-2(c)(4)(ii)(A) provides that if a person is required to file original information returns electronically, that person must file any corresponding corrected information returns electronically. Proposed §301.6011-2(c)(4)(ii)(B) provides that, if a person is permitted to file information returns on paper and does file those information returns on paper, that person must also file any corresponding corrected information returns on paper.

One commenter generally supported the corrected-return rule, but expressed concern that the rule could occasionally be an inconvenience to some people or that an intervening event could occur that would require filers to change their method of filing. Two other commenters noted that the corrected-return rule would add an additional burden on filers because many software options provide electronic filing of original returns but not corrected ones. One of these commenters recommended that the Treasury Department and the IRS delay requiring filers to correct their electronically-filed returns electronically until the IRS has a platform in place (for example, the internet platform for Form 1099 filings required by section 2102 of the TFA) that will accept



corrected information returns online. Another commenter opined that the IRS should not require corrected returns to be filed in a particular manner, but should instead “encourage the most efficient way to serve the majority better.”

The final regulations do not adopt these comments. The Treasury Department and the IRS have determined that, because of the disparate procedures for processing paper and electronic information returns, the corrected-return rule will increase the IRS’s timeliness and accuracy in processing information returns, which will improve tax administration with respect to corrected returns. The Treasury Department and the IRS expect that the number of software options providing electronic filing for corrected returns will increase to meet that expected increase in demand. The IRS will work with the tax-software community to encourage them to develop software options for corrections. If an intervening event or the cost to purchase electronic-filing software for corrected information returns would cause a filer undue hardship, the filer may request a waiver from the electronic-filing requirement for the corrected information returns. As discussed in this preamble, the changes to the information return electronic-filing rules, including the corrected-return rule, in this Treasury Decision will apply for returns required to be filed after December 31, 2023, which is after the launch of the Form 1099 filing platform. See section I.A. Applicable for Returns Required to be Filed in 2024.

#### C. TCC issues for non-United States (U.S.) filers

The proposed regulations would increase the number of non-U.S. filers required to electronically file their information returns. On July 26, 2021, the IRS announced changes to the procedures for filers to authenticate their identities to create an account to apply for a TCC, which is required to electronically file most information returns. See FIRE System Update: Improving the Process and Security for Information Return (IR) Application for Transmitter Control Code (TCC), IRS (Oct. 1, 2021),

*<https://www.irs.gov/tax-professionals/fire-system-update-improving-the-process-and->*

*security-for-information-return-ir-application-for-transmitter-control-code-tcc* (last visited January 13, 2023).

Several commenters expressed concern with the changes to the authentication identity-proofing procedures. One commenter mentioned that a significant number of qualified intermediaries and foreign filers would not be able to electronically file information returns, such as Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, and 1099, because the new authentication procedures require users to have U.S.-based information, such as a U.S. Taxpayer Identification Number, U.S. telephone number, or U.S. financial account, to authenticate their identity before obtaining a TCC. Two other commenters expressed similar concerns with respect to all non-U.S. filers, specifically noting that due to client confidentiality and related issues, it is not feasible to require non-U.S. filers to engage third parties to file returns on their behalf. Two of the commenters recommended the IRS exclude qualified intermediaries and other non-U.S. filers from the secure authentication identity-proofing procedures to ensure they can continue to submit their information returns electronically. The other commenters recommended that the IRS, without compromising the security objectives, make accommodations for foreign filers so they can continue to file their information returns electronically.

The Treasury Department and the IRS are aware of this authentication issue for non-U.S. filers, but the final regulations do not adopt the suggestion to provide a blanket electronic-filing exemption for non-U.S. filers. The IRS's preferred approach, in light of the TFA's emphasis to increase electronic filing, is to develop alternative authentication requirements for identity proofing in accordance with standards set forth by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST). The IRS is thus actively working to develop updated authentication procedures for non-U.S.

filers that comply with the NIST standards and will inform the public in subsequent guidance or public pronouncement when these procedures become available.

#### D. Form 1042-S issues

Proposed §301.6011-2(b)(1) includes Form 1042-S in the list of information returns covered by the electronic-filing rules set forth in that regulation. Form 1042-S has been included in the regulation since 1986. The proposed regulation, however, counts all the information returns in the aggregate to determine if the filer must electronically file. In addition, the proposed regulation decreases the number of information returns that can be filed on paper from 250 to 10, for returns required to be filed in calendar year 2023 and after. Two commenters requested that the Treasury Department and the IRS remove Form 1042-S entirely from the list of returns included in the proposed regulations because of the changes to Form 1042-S since 2013. For example, the 2013 Form 1042-S code for “other income” was income code 50, but the “other income” code was later changed to income code 23. The two commenters opined that changes to these codes could confuse filers and recipients of the form, and that updating the software to address these changes could present challenges to software providers. One of the commenters stated that the proposed regulations would disproportionately affect occasional and low-volume filers of the Form 1042-S who may not have sufficient resources to comply with the proposed regulations. Both commenters opined that, if Form 1042-S is removed from the aggregation rule, the IRS would not need as many resources to deal with improper filing errors and requests for a waiver from electronic filing for Forms 1042-S.

The final regulations do not adopt these comments. Although Form 1042-S underwent several changes for taxable year 2014 to accommodate reporting of payments and amounts withheld under the provisions of the Foreign Account Tax Compliance Act, the form has not undergone a large number of changes since then.

For example, the 2022 Form 1042-S added to the form four new codes, but each was assigned a completely new number that was not previously listed on the 2021 Form 1042-S. Absent extraordinary circumstances, such as relevant statutory changes, no substantial changes to the income codes on Form 1042-S are expected at this time. To the extent, however, that taxpayers receiving Forms 1042-S have questions about how to report the information, the IRS updates the Instructions for Form 1042-S and the instructions for income tax returns each year so that taxpayers will have the most up-to-date information. Finally, the Treasury Department and the IRS have determined that the benefits to be gained in the form of faster and more accurate return processing outweigh any concerns about IRS resources needed in processing electronic-filing waiver requests.

### III. Waiver and Exemptions

As described in the preamble to the proposed regulations, many of the regulations imposing electronic-filing requirements also provide a waiver from electronic filing to any person who establishes undue hardship. The Treasury Department and the IRS specifically requested comments on how the hardship-waiver procedures should be administered, including suggestions for revising the procedures for requesting, and criteria for granting, a hardship waiver, and received several comments in response.

#### A. Cost concerns

One commenter generally supported the proposed rules, noting that electronic filing not only significantly reduces paper waste but also is faster and more reliable than paper filings, which can get lost in the mail. Another commenter agreed that all persons should “get on board with the digital age of tax record keeping and filing,” but commented that new small businesses with little resources and businesses that have paper filed for years may not want to file electronically or may not know how. Both commenters expressed concern over the cost of electronic filing, suggesting that the

IRS waive all or part of the cost for low-income taxpayers and others experiencing financial hardship.

The final regulations do not adopt these comments. The preamble to the proposed regulations describes the recent reduction in costs to electronically file and the significant benefits of moving to electronic filing. To address any undue hardship on certain small businesses arising from these changes to the electronic-filing rules, the Treasury Department and the IRS will continue to administer the hardship-waiver program fairly and consistently and to grant reasonable-cause relief from penalties for failure to file returns electronically in appropriate cases.

#### B. General waiver and exemption procedures

Three commenters expressed concern that, unless the IRS provides administrative exemptions or hardship waivers, the proposed regulations under section 6011(e) would impose burdens upon discrete populations including, for example, members of certain religious communities; remote populations; and elderly individuals without adequate technological literacy.

With respect to religious communities, the commenters noted that members of certain religious communities, in accordance with their religious practices, generally do not use technology and have tenets and teachings that prohibit community members from having internet access or the technology required to electronically file tax returns. The commenters thus expressed concern that the reduction of the electronic-filing threshold to 10 returns with respect to information returns, partnership returns, corporate income tax returns, and electing small business income tax returns would now require many small business owners who are members of these religious communities to file these returns electronically, in violation of their religious practices. The commenters recommended two alternative changes to the waiver procedures: that the Treasury Department and the IRS expand the current waiver request form, Form

8508, *Request for Waiver From Filing Information Returns Electronically*, to include either a one-time or an annual application for exemption from electronic-filing requirements, based on religious beliefs, for any form the filer is required to file electronically; or that a new form be created, similar to Form 8948, *Preparer Explanation for Not Filing Electronically*, that could be attached to the paper-filed return to explain that the filer was filing on paper because of religious beliefs.

The Treasury Department and the IRS agree that filers for whom using the technology required to file in electronic form conflicts with their religious beliefs should be granted administrative exemptions from the electronic-filing requirements for information returns under §301.6011-2; partnership returns under §301.6011-3; corporate income tax returns under §301.6011-5; electing small business income tax returns under §301.6037-2; and other returns and statements that the IRS determines appropriate. To that end, final regulations §§301.6011-2(c)(6)(ii); 301.6011-3(b)(2); 301.6011-5(b)(2); and 301.6037-2(b)(2) provide that an exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. Additionally, except as described in section III.C. of this preamble, the final regulations authorize the Commissioner to provide exemptions from the electronic-filing requirements to promote effective and efficient tax administration. Finally, these final regulations clarify that a submission claiming an exemption should be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including posting to the *IRS.gov* website. In general, exemptions will be made available on a form-by-form basis rather than on a per-filer basis to allow the IRS to appropriately address differences in filing requirements and filer populations.

With respect to remote populations, one of the commenters expressed concern that many Native tribes, such as Native Alaskan tribes, lack access to Internet and computers and that the reduction of the electronic-filing threshold for information returns

would impact some of these Native Alaskans, for example, a commercial fishing captain. This commenter also stated that a disproportionate number of Americans in business age 65 or older may lack the ability or accessibility to electronically file tax returns and that the cost for these older taxpayers to pay a third party to electronically file could force them out of business. The commenter asked whether factors other than financial cost, such as a filer's lack of access to digital technology or a filer's age, are factored into the IRS's decision on whether to grant a waiver request. The commenter further expressed concern that granting a hardship waiver is discretionary and that the procedures do not include an objective threshold or standard on how much the cost to electronically file must exceed the cost to paper file for the IRS to grant an electronic-filing waiver. The commenter thus recommended that the Treasury Department and the IRS expand or clarify that the hardship-waiver procedures to include Native tribes and other persons with difficulty accessing or using technology.

The Treasury Department and the IRS expect rural filers without access to internet and older filers that lack digital literacy to make good faith efforts to comply with the electronic-filing requirements of these regulations, which may require obtaining additional assistance to electronically file. To the extent the burden of obtaining the necessary assistance to file returns would cause undue hardship, the filers may submit a hardship-waiver request from the electronic-filing requirements.

Under section 6011(e)(2)(B) of the Code, the IRS must consider (among other relevant factors) the taxpayer's ability to comply at a reasonable cost with the requirements of such regulations. To determine whether a taxpayer can comply with the electronic-filing requirements at a reasonable cost, the IRS requires the taxpayer to provide two estimates of the cost that the taxpayer would incur to convert to electronic filing. Financial cost, however, is not the only factor that the IRS may consider. Under current procedures, for example, the IRS will consider granting a waiver from the

electronic-filing requirements for information returns covered under §301.6011-2(b) if a fire, casualty, or natural disaster affected the operation of the business. The proposed hardship-waiver language, for example in proposed §301.6011-2(c)(6)(i), provides that “[t]he principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper.” Because the IRS takes other factors into consideration when analyzing a request for a waiver from electronic-filing requirements, the final regulations are modified to read, “One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper.” The Treasury Department and the IRS anticipate that additional details on the specific hardship-waiver procedures for each form affected by this Treasury Decision will be included in future public releases of IRS forms and instructions. After considering public comments, the IRS revised the Form 8508 in January 2023 to clarify the circumstances the IRS may accept to justify a waiver from the e-filing requirement for the information returns listed on the Form, including hardships other than financial hardship. The Treasury Department and the IRS have thus determined that the IRS’s current hardship-waiver procedures provide appropriate relief to rural and older taxpayers from any undue burdens arising from these changes to the electronic-filing rules. Reasonable cause relief from penalties may also be available for these filers.

The final regulations also clarify that, if the IRS’s systems do not support electronic filing for a specific return required to be filed electronically with the IRS, a taxpayer will not be required to file the return electronically. Several of the final regulations require the electronic filing of returns that were previously filed on paper only. If the IRS’s systems do not have the capacity to accept a particular type of return electronically when the electronic-filing requirements become applicable, this provision



clarifies that a taxpayer will not be required to file that type of return electronically. In such situations, a taxpayer will not be required to submit a request for a hardship waiver to file that type of return on paper.

Finally, one of the commenters expressed concern with the statement in the proposed regulations that “a request for a hardship waiver must be made in accordance with postings, guidance, forms or instructions, including those *on the IRS.gov website*” because these discrete populations, without access to the website, might not have the latest guidance posted to the website, and so might be filing a hardship-waiver request based on outdated guidance from paper forms and instructions. The commenter thus recommended that the IRS be lenient in imposing penalties on taxpayers of faiths who avoid technology, filers that lack access to technology, and older Americans who in good faith request a hardship waiver in compliance with outdated guidance.

The Treasury Department and the IRS have determined that to the extent that a taxpayer can show reasonable cause for failure to file electronically, including valid impediments to making a proper waiver request, the penalty for failure to file will not apply.

### C. Exceptions to general waiver and exemption procedures

The final regulations do not provide for waivers and exemptions in all circumstances or for all tax forms required to be electronically filed.

#### 1. Returns required under section 3101 of the TFA

Section 3101 of the TFA sets forth two requirements for mandatory electronic filing by tax-exempt organizations: under new section 6011(h), organizations with returns relating to any tax imposed under section 511 on unrelated business taxable income “shall file such return in electronic form,” and under new section 6033(n), organizations with returns required to be filed under section 6033 “shall file such return in electronic form.” Thus, the TFA amendments expand the class of forms that tax-

exempt entities are currently required to file electronically, such as the Form 990-N, *Electronic Notice (e-Postcard)*, and Form 8871, *Political Organization Notice of Section 527 Status*.

Section 3101 of the TFA states that organizations required to file a return under sections 6011(h) or 6033(n) “shall” file such return in electronic form and does not provide for any waiver or alternative method to meet the electronic-filing requirements. The legislative history to section 3101 of the TFA explains that mandatory electronic filing by all tax-exempt organizations required to file returns will improve efficiency, reduce costs, and generally improve oversight of tax-exempt organizations. H. Rep. No. 116-39, at 97-98 (2019). Section 3101 of the TFA also amended section 6104(b) to provide that “[a]ny annual return required to be filed electronically under section 6033(n) shall be made available by the Secretary to the public as soon as practicable in a machine-readable format.” The legislative history explains that it is important to increase the transparency of, and enhance public access to, information about tax-exempt organizations, particularly charitable organizations. *Id.* The legislative history further explains that this will expedite the publication of the information required to be disclosed by the IRS and will enhance its usability by stakeholders attempting to exercise oversight of tax-exempt organizations. *Id.* Such stakeholders include not only members of the public who may support or donate to an organization, but also state and local officials charged with oversight responsibilities and responsibility for prosecuting fraudulent charities.

In contrast to forms affected by section 2301 of the TFA, there is no requirement that an alternate paper filing process be provided for certain filers of forms affected by section 3101 of the TFA (such as for filers filing fewer than 10 returns). Further, in contrast to forms affected by section 2301 of the TFA, information returns affected by section 3101 of the TFA are required to be released to the public in machine-readable

format under section 6104(b), a process that would be hampered if the IRS were required to accept paper returns and frustrate the intent of Congress to expedite the publication of those returns. Proposed §§301.6011-10 and 301.6033-4, consistent with the statutory mandate to require all forms affected by section 3101 of the TFA to be electronically filed, did not provide for any waiver or exemption from the electronic filing requirements.

While public comments generally requesting waivers or exemptions from the electronic filing requirements under certain circumstances were received, §§301.6011-10 and 301.6033-4 are finalized without waiver or exemption provisions because providing a waiver or exemption provision would be contrary to the plain language of section 3101 of the TFA and inconsistent with the legislative history to that section. Notwithstanding that, the Religious Freedom Restoration Act of 1993, Public Law 103-141 (107 Stat. 1488), may provide an exemption for any filer for whom using the technology required to file electronically conflicts with their religious beliefs.

## 2. Qualified plan returns filed through EFAST2

On July 21, 2006, the Department of Labor (DOL) published a final rule in the **Federal Register** (71 FR 41359), requiring electronic filing of the Form 5500, *Annual Return/Report of Employee Benefit Plan*, and Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, for plans covered by Title I of the Employee Retirement Income Security Act, Public Law 93-406 (88 Stat. 854), as amended (ERISA) for plan years beginning on or after January 1, 2008. On November 16, 2007, the DOL published a final rule in the **Federal Register** (72 FR 64710), postponing the effective date of the electronic filing mandate so that the mandate applies to plan years beginning on or after January 1, 2009. See 29 CFR §2520.104a-2.

Filers of the Form 5500 and Form 5500-SF are required to file electronically through DOL's computerized ERISA Filing Acceptance System (EFAST2). Rev. Proc. 2015-47, 2015-39 IRB 419, sets forth procedures to request a waiver of the electronic-filing requirement due to economic hardship for plan administrators of retirement plans (or, in certain situations, employers maintaining retirement plans) that are required to file electronically certain employee benefit plan returns. Section 3 of Rev. Proc. 2015-47 provides that, because filers of Form 5500 and Form 5500-SF are required to file those returns electronically through DOL's EFAST2, a waiver of the electronic-filing requirement for those forms will not be granted. Because an actuarial report required under section 6059 is filed with Form 5500 or Form 5500-SF as a schedule and is also required to be filed electronically through DOL's EFAST2, a waiver of the electronic-filing requirement for the actuarial report also will not be granted. Sections 301.6058-2 and 301.6059-2 of the final regulations continue to provide that the Commissioner may waive the electronic-filing requirements under sections 6058 and 6059 in cases of undue economic hardship, and that a request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. However, pursuant to section 3 of Rev. Proc. 2015-47, waivers of the electronic-filing requirement for Forms 5500 and 5500-SF (and related actuarial reports) will continue to not be granted. In addition, §§301.6058-2 and 301.6059-2 of the final regulations do not provide for any exemptions to the electronic-filing requirement for Forms 5500 and 5500-SF (and related actuarial reports) because, unlike other filings described in this Treasury Decision, Forms 5500 and 5500-SF (and related actuarial reports) are required to be filed electronically through DOL's EFAST2.

### 3. Form 8300

If filed electronically, Forms 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, are not filed electronically with the IRS; rather they are filed electronically through the Financial Crimes Enforcement Network's (FinCEN) BSA E-Filing System. The Treasury Department, FinCEN, and the IRS have determined that most Form 8300 filers who might have difficulty filing electronically and might therefore need a waiver, would likely not be required to file electronically in the first place because they would not meet the electronic-filing threshold in §301.6011-2(c), even after that threshold is reduced to 10 returns. See section II.A. Accordingly, the Treasury Department, FinCEN, and the IRS have determined that there is no need for a separate waiver process for Form 8300 filers. Instead, Form 8300 filers who request and receive a waiver under §301.6011-2(c) for any return required to be filed under §301.6011-2(b)(1) or (2) will automatically be deemed to have received an electronic-filing waiver for any Forms 8300 the filer is required to file for the duration of the calendar year.

#### IV. Form 1042 Substantiation Requirements to Claim Credit on Line 67

Proposed §§301.1474-1(a) and 301.6011-15(a) would require certain filers to electronically file Forms 1042. Forms 1042 have previously been filed only on paper. For Form 1042 filers that claim a credit on line 67 for taxes withheld by other withholding agents, the filers substantiate this credit by attaching, to the Form 1042, paper copies of the Forms 1042-S they received from those other withholding agents.

In light of the electronic-filing requirements for Form 1042, two commenters requested the IRS remove the requirement to provide paper copies of Forms 1042-S to support the claim made on line 67 of the Form 1042, suggesting that the IRS would already have electronic copies of the Forms 1042-S filed by the other withholding agents, making the requirement duplicative.

The final regulations do not adopt these comments as they are outside the scope of these regulations, which do not impose the requirement to provide paper copies. Nonetheless, the IRS is actively working to develop programming that would allow filers to electronically attach or submit Forms 1042-S with their Forms 1042 to substantiate their claimed credit on Line 67. The IRS expects to have programming in place consistent with the applicability dates in these final regulations.

#### V. Regulatory Flexibility Act Certification

One commenter expressed concern that, although the proposed regulations certify that they will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act, the regulations will in fact have a “significant economic impact” on small entities.

The Treasury Department and the IRS maintain their certification that the final rules will not have a significant economic impact on a substantial number of small entities for the reasons discussed in subsection II, Regulatory Flexibility Act, of the following Special Analyses section of this preamble.

#### VI. Clarification on a Failure to File Electronically When Required

The proposed regulations provide that if a filer fails to file a return or report electronically when required to do so by the regulations, the filer is “deemed” to have failed to file the return or report. The word “deemed” is superfluous because a taxpayer who fails to file electronically when required to do so by these regulations has failed to file. Therefore, for sake of clarification, the Treasury Department and the IRS have made minor edits to remove the word deemed from final regulations §§54.6011-3(c), 301.1474-1(c), 301.6011-10(b), 301.6011-12(c), 301.6011-13(c), 301.6011-14(c), 301.6011-15(c), 301.6012-2(c), 301.6033-4(b), and 301.6721-1(a)(2)(ii).

#### VII. Clarification on 10-Return Calculation for Material Advisor Disclosure Statements

Under section 6111 and §301.6111-3(a) and (e), each material advisor is required to file a Form 8918, *Material Advisor Disclosure Statement*, with respect to any reportable transaction by the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with respect to the reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. Thus, a material advisor may not know the number of Forms 8918 it will be required to file during a calendar year until after the end of the third quarter of the calendar year. On the other hand, other returns—for example, Forms 1099, income tax returns, employment tax returns, and excise tax returns—have fixed due dates by which those returns must be filed each calendar year. A filer of those returns will therefore know at the beginning of the calendar year whether the filer is required to file at least 10 returns of those types. Thus, the Treasury Department and the IRS clarify in these final regulations that a material advisor will be required to file its Forms 8918 electronically or in other machine-readable form in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, during the calendar year only if the material advisor is required to file at least 10 returns of any type, other than Forms 8918. This clarification will help ensure material advisors understand early in the calendar year whether any Forms 8918 must be filed electronically or in other machine-readable form without complications of being unable to determine at the beginning of a calendar year the number of Forms 8918 that may need to be filed during the calendar year.

## **Special Analyses**

### I. Regulatory Planning and Review – Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including (i) potential economic, environmental,

and public health and safety effects, (ii) potential distributive impacts, and (iii) equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) (MOA) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated these final regulations as significant under section 1(b) of the MOA.

A. Background, Need for the Final Regulations, and Economic Analysis of Final Regulations

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248, (96 Stat. 610), first directed the Secretary to prescribe regulations for requiring returns to be filed on magnetic media, a term generally used to refer to electronic filing at that time. TEFRA prohibited the Secretary from requiring income tax returns of individuals, estates, and trusts to be filed in a manner other than on paper forms. In 1998, Congress amended section 6011(e) of the Code to prohibit the Secretary from requiring the electronic filing of a return unless the filer is required to file at least 250 returns during the calendar year. The Treasury Department and the IRS subsequently issued regulations that required a person to file information returns electronically if that person is required to file 250 or more information returns in a calendar year. The regulations provide that the 250-return threshold applied separately to each type of information return covered under the regulations. The Treasury Department and the IRS also issued regulations that set a 250-return threshold in determining whether large corporation tax returns, S corporation tax returns, and other returns must be electronically filed.

Since 1998, the technology underlying electronic filing has become much more widely available, both in the form of tax return preparation software and electronic filing



services offered by tax return preparers and other service providers. By 2019, over 98.8 percent of information returns were already being filed electronically. In July of that year, the President signed into law the Taxpayer First Act (TFA). The TFA authorizes the Secretary to prescribe regulations that decrease the number of returns a filer may file without being required to file electronically from 250 to 10.

When returns are filed on paper, the IRS transcribes much of the input data to electronic format. In some cases, employees must manually input this data, requiring significant IRS resources to be spent on otherwise needless processing and data entry rather than serving taxpayers in other ways. Manual data entry can cause delays in the input and retrieval of data, affecting the timeliness and accuracy of processing these forms. This can lead to delays or other disadvantageous outcomes for taxpayers. In some cases, manual data entry can cause delays in the information available for law enforcement and other users to detect potential money laundering, terrorist financing, and other tax and financial fraud. Moreover, the increased accuracy of the data received from electronic filing reduces transcription errors and the cost for the IRS and taxpayers to resolve these errors.

These final regulations impose electronic-filing requirements on persons required to file certain returns, including partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, and certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns. Specifically, the final regulations reduce the 250-return threshold enacted in 1998 to the 10-return threshold provided by the TFA. Under current regulations, the 250-return threshold applies separately to each type of information return covered under the regulations. The final regulations require filers to aggregate across returns types to determine whether a filer meets the 10-return threshold and is thus required to file electronically.

The IRS receives nearly 4 billion information returns per year and projects that by 2028, it will receive over 5 billion information returns each year. See <https://www.irs.gov/statistics/soi-tax-stats-calendar-year-projections-publication-6961> (last visited January 13, 2023). In 2019, the IRS received nearly 40 million paper information returns even though approximately 99 percent of all information returns for that year were filed electronically.

For taxable year 2020, the data shows that creating a 50-return threshold would require 1-2 percent of the largest paper information return filers to file electronically, resulting in approximately 23 percent of all paper information returns currently filed to be filed electronically. For the same year, a 25-return threshold would require approximately 4-5 percent of the largest paper information return filers to file electronically, resulting in approximately 39-41 percent of paper information returns currently filed to be filed electronically. At the 10-return threshold, the IRS is only requiring 13-16 percent of the largest paper information return filers to file electronically, but this will result in 62-64 percent of all outstanding paper information returns to be filed electronically.

In 2020, approximately 13 million out of 35 million paper information returns were filed by filers filing 1-10 returns and these filers averaged 2.78 returns each. This means approximately 85 percent of all paper information return filers would not be subject to the electronic-filing mandate at a 10-return threshold based on the 2020 data, yet nearly two-thirds of all paper information returns would then be required to be filed electronically. Thus the high rate of electronic filing does not negate the need for regulations to further reduce the number of paper returns the IRS is required to manually process each year.

Because the vast majority of returns subject to these final regulations are already filed electronically, the Treasury Department and the IRS expect that the final

regulations will not have any meaningful impact on economic behavior. Electronic filing has become more common, accessible, and economical. The table below shows recent trends in the electronic-filing rates of tax returns and information returns. Eighty-one percent of all tax returns, including 95 percent of individual income tax returns, were filed electronically in fiscal year 2020, rising from 68 percent for all tax returns and 87 percent for individual income tax returns in 2016. Nearly all information returns submitted to the IRS were filed electronically.

<b>Fiscal Year</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
All tax returns	68%	70%	71%	73%	81%
Individual income tax returns	87%	88%	88%	90%	95%
Information returns, excluding forms processed by the Social Security Administration (Form SSA-1099, Form RRB-1099, and W-2)	99%	99%	99%	99%	100%

Data source: IRS Publication 6292 and IRS Data Book

In the limited circumstances in which the cost to comply with these electronic-filing requirements would cause undue hardship, many of these regulations provide a waiver from electronically filing. The IRS routinely grants meritorious hardship waiver requests. According to the regulations, such undue hardship could be caused by a range of factors that are not limited to the financial cost that would be incurred by the filer. For example, a hardship to comply with the electronic-filing requirements can apply to remote populations with limited online access and filers who lack adequate technological proficiency. Regardless of the factors, little economic burden is expected for the waiver process because submitting a hardship waiver requires no more technology than filing paper returns. For information returns, waiver requests can be made for many returns on the same Form 8508. (See instructions for Form 8508.)

In addition to hardship waivers, the final regulations provide exemptions for religious communities for whom using the technology required to file in electronic form conflicts with their religious beliefs. An exemption means that filers do not have to be pre-approved to paper file. Thus, filers that are eligible for an exemption would not experience additional burden under the regulations.

In enacting TFA, Congress made clear its intention to broaden the requirements to file returns electronically. However, the broadened requirements intended by Congress will not occur without final regulations. In the absence of these regulations, the IRS would continue to devote resources to costly and inefficient processing of paper filings, resources that could be allocated to modernization of IT infrastructure.

Significant administrative costs include the time it takes an IRS employee to manually process paper information returns. First, the IRS employee must open and inspect the mail to determine what type of return or other form is in the envelope, re-route the form if needed, ensure the return is processable and includes a Taxpayer Identification Number (TIN), and then date stamp the return. This initial step must take place within 30 days of receipt to allow timely correspondence with the filer of processable returns to give the filer time to correct the mistakes and re-file.

The IRS employee must next review the return to determine whether it is scannable or non-scannable, which includes removing staples and taping any cuts or torn portions of the document. The IRS employee must then cross check the information on the returns against the parent transmittal return (Form 1096) for the payer's TIN, payer's name, and if either is missing or illegible, cross check other submissions for the information or send correspondence to the filer.

Scannable submissions are then prepared for processing through the Service Center Recognition/Image Processing System (SCRIPS). Non-scannable submissions are sorted, coded, and batched after ensuring all necessary information is included, which varies between types of information returns. The batched information returns are then forwarded to the appropriate IRS facility for Integrated Submission and Remittance Processing (ISRP). The ISRP employee must manually enter all required fields and add the appropriate document and format codes in accordance with the Internal Revenue Manual.

In August 2020, the IRS projected the potential cost and savings for implementation of the reduction of the electronic-filing threshold. The IRS estimated that the savings for IRS Submission Processing (IRS SP) due to fewer paper information returns to process when the electronic-filing threshold was reduced from 250 to 100 returns is 35 full-time equivalents (FTEs), or \$2 million. This savings would be offset by the cost to enroll new participants in the FIRE System, which the IRS estimated would cost 9 FTEs, or \$500,000. Thus, the IRS's net savings as a result of the reduction to the electronic-filing threshold from 250 to 100 returns is estimated to be 26 FTEs, or \$1.5 million.

The IRS estimated that the savings for IRS SP due to fewer paper information returns to process when the electronic filing threshold was reduced from 100 to 10 returns is 147 FTEs, or \$8.3 million. This savings would be offset by the cost to enroll new participants in the FIRE System, which the IRS estimated would cost 40 FTEs, or \$2.3 million. Thus, the IRS's net savings as a result of the reduction to the electronic-filing threshold from 100 to 10 returns is estimated to be 107 FTEs, or \$6 million. Finally, the IRS estimated that the savings for IRS SP due to fewer paper information returns to process when the electronic-filing threshold was reduced from 250 to 10 returns is 182 FTEs, or \$10.3 million. For the first year of the reduction, the savings would be offset by the cost to enroll new participants in the FIRE System, which the IRS estimated would cost 49 FTEs, or \$2.8 million. Thus, for the first year of implementation, the IRS's net savings as a result of the reduction to the electronic-filing threshold from 250 to 10 returns is estimated to be 133 FTEs, or \$7.5 million.

For each subsequent year, the IRS estimated that the savings for IRS SP due to fewer paper information returns to process is 147 FTEs, or \$8.3 million, which would be offset by some cost for telephone support.

An increase in electronic filing percentage rates change will result in millions fewer paper documents, freeing up valuable IRS resources for other tasks. Based on taxable year 2020 data, a 10-return electronic-filing threshold would have resulted in approximately 21 million fewer paper information returns. While the IRS projects the number of paper returns will continue to decrease even absent changes to the regulations, the decrease is projected to be gradual.

Requiring more electronic filing would increase the timeliness and accuracy of data entry, reduce postage costs, promote IT modernization efforts, reallocate IRS staff for priority assignments, and provide IRS criminal and civil investigators and other agencies with access to the data with more up-to-date and accurate information. Moreover, increased efficiency in processing returns will allow the IRS to provide faster and better customer service to taxpayers. Given the increasing prevalence of electronic filings in recent years, the final regulations reduce the 250-return threshold enacted in 1998 to the 10-return threshold provided by the TFA.

## II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although these rules may affect a substantial number of small entities, for the reasons discussed in the following paragraphs, the economic impact is not significant.

Under section 6011(e) of the Code and §§1.6050M-1, 301.6011-2, 301.6011-3, 301.6011-5, 301.6037-2, 301.6057-3, 301.6058-2, and 301.6059-2, filers are already required to file returns and statements electronically if, during a calendar year, they are required to file 250 or more returns. The eight rules—§§1.6050M-1, 301.6011-2, 301.6011-3, 301.6011-5, 301.6037-2, 301.6057-3, 301.6058-2, and 301.6059-2—will lower the 250-return threshold to 10, as authorized by section 6011(e), as amended by

section 2301 of the TFA. A filer may request that the IRS waive the electronic-filing requirement if the filer's cost to comply with the rule would cause a financial hardship. The cost to electronically-file for a filer varies by form and by how many types of forms the filer is required to file. For example, low volume information return filers can electronically-file for approximately \$3.25 per form, with options available for filing an unlimited number of information returns starting at \$120. Commercial software is available for business returns such as Forms 1120 for as low as \$125. The IRS routinely grants meritorious hardship-waiver requests. Accordingly, the economic burden on the limited number of small entities that are not currently filing electronically will be slight; small entities that would experience a financial hardship because of these eight rules may seek a waiver. Requesting a waiver will impose a minor cost in the form of time to read the expanded instructions, gather and prepare for submission the information and documents substantiating the request (if needed), and to complete the form itself.

Under section 6050I of the Code and §§1.6050I-1 and 1.6050I-2, filers are required to file Forms 8300 if, in the course of their trade or business, they receive more than \$10,000 in cash (as that term is defined in section 6050I(d)) in one transaction or in two or more related transactions. The rule under §301.6011-2(b)(3) requires filers of Forms 8300 to file those forms electronically if such filers are also required to file returns electronically under paragraphs (b)(1) and (2) of §301.6011-2. The Treasury Department and the IRS expect filers of Form 8300 to use FinCEN's BSA E-Filing System, which is free and may be accessed with an internet connection. See <https://bsaefiling.fincen.treas.gov/main.html> (last visited January 13, 2023). The filers may incur minor costs in the form of time needed to enroll in FinCEN's BSA E-Filing System and to become familiar with the system, but the enrollment process should only

take several minutes. The economic impact on small entities should thus not be significant.

Under section 6011(e)(4) of the Code and §301.1474-1, financial institutions defined in section 1471(d)(5) of the Code already are required to electronically file Forms 1042-S. The rule under §301.1474-1(a) extends this filing requirement to Forms 1042 filed by the same financial institutions. Small entities that would experience a financial hardship because of this rule may seek a hardship waiver.

Under section 6011(h) of the Code, as amended by section 3101 of the TFA, organizations required to file annual returns relating to any tax imposed by section 511 must file those returns in electronic form. Because the regulation §301.6011-10 implements this statutory requirement, the economic impact of the regulation on small organizations should thus be insignificant.

Under section 6033(n), as amended by section 3101 of the TFA, organizations required to file returns under section 6033 must file those returns in electronic form. Because the regulations under §§1.6033-4, 53.6011-1, and 301.6033-4 implement this statutory requirement, the economic impact of these regulations on small organizations should thus be insignificant.

The seven regulations under §§54.6011-3, 301.6011-11, 301.6011-12, 301.6011-13, 301.6011-14, 301.6011-15, and 301.6012-2 require electronic filing for certain returns not currently required to be filed electronically. Because electronic filing has become more common, accessible, and economical, the economic impact of these rules on small entities should be insignificant. Moreover, as discussed above, if the cost to comply with these electronic-filing requirements would cause a financial hardship, an entity may request a waiver. The IRS routinely grants meritorious hardship waiver requests. Accordingly, the burden on small entities affected by these rules will be slight.



Accordingly, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA.

Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This regulation does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C 804(2).

### **Statement of Availability of IRS Documents**

IRS revenue procedures, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### **Drafting Information**

The principal author of these final regulations is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects**

#### **26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **26 CFR Part 53**

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

#### **26 CFR Part 54**

Excise taxes, Pensions, Reporting and recordkeeping requirements.

#### **26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 53, 54, and 301 are amended as follows:

### **PART 1-INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

Authority: 26. U.S.C. 7805 \* \* \*

\* \* \* \* \*

Section 1.6033-4 also issued under 26 U.S.C. 6033.

\* \* \* \* \*

Section 1.6037-2 also issued under 26 U.S.C. 6037.

\* \* \* \* \*

Par. 2. Section 1.1461-1 is amended by removing paragraph (c)(5); redesignating paragraph (i) as paragraph (j); adding a new paragraph (i); and revising newly redesignated paragraph (j).

The addition and revision read as follows:

**§1.1461-1 Payment and returns of tax withheld.**

\* \* \* \* \*

(i) *Reporting in electronic form.* See §§301.6011-2(b) and 301.6011-15 of this chapter for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042-S and 1042 in electronic form. See §301.1474-1(a) of this chapter, which applies for purposes of this section to a withholding agent that is a financial institution with respect to the filing of Forms 1042 and 1042-S in electronic form.

(j) *Applicability date.* The rules of this section apply to returns required to be filed for taxable years ending on or after December 31, 2023. (For returns required to be filed for taxable years ending before December 31, 2023, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2022.)

Par. 3. Section 1.1471-0 is amended by revising:

a. The entries in the table of contents for §1.1474-1(e) and (j);

b. The heading for §301.1474-1; and

c. §301.1474-1(d)(1) and (e).

The revisions read as follows:

**§1.1471-0 Outline of regulation provisions for sections 1471 through 1474.**

\* \* \* \* \*

*§1.1474-1 Liability for withheld tax and withholding agent reporting.*

\* \* \* \* \*

(e) Reporting in electronic form.

\* \* \* \* \*

(j) Applicability date.

\* \* \* \* \*

§301.1474-1 Required use of electronic form for financial institutions filing Form 1042, Form 1042-S, or Form 8966.

\* \* \* \* \*

(d) \* \* \*

(1) Magnetic media or electronic form.

\* \* \* \* \*

(e) Applicability date.

Par. 4. Section 1.1474-1 is amended by revising paragraphs (e) and (j) to read as follows:

**§1.1474-1 Liability for withheld tax and withholding agent reporting.**

\* \* \* \* \*

*(e) Reporting in electronic form.* See §§301.6011-2(b) and 301.6011-15 of this chapter, which apply for purposes of this section, for the requirements of a withholding agent that is not a financial institution with respect to the filing of Forms 1042-S and Form 1042 in electronic form. See §301.1474-1(a) of this chapter for the requirements

applicable to a withholding agent that is a financial institution with respect to the filing of Forms 1042 and 1042-S in electronic form.

\* \* \* \* \*

(j) *Applicability date.* The rules of this section apply to returns required to be filed for taxable years ending on or after December 31, 2023. (For returns required to be filed for taxable years ending before December 31, 2023, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2022.)

Par. 5. Section 1.6033-4 is revised to read as follows:

**§1.6033-4 Required filing in electronic form for returns by organizations required to file returns under section 6033.**

(a) *In general.* The return of an organization that is required to be filed in electronic form under §301.6033-4 of this chapter must be filed in accordance with IRS revenue procedures, publications, forms, instructions, or other guidance.

(b) *Applicability date.* The rules of this section apply for returns required to be filed for taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Par. 6. Section 1.6037-2 is revised to read as follows:

**§1.6037-2 Required use of electronic form for income tax returns of electing small business corporations.**

(a) *In general.* The return of an electing small business corporation that is required to be filed electronically under §301.6037-2 of this chapter must be filed in accordance with IRS revenue procedures, publications, forms, or instructions, including those posted electronically.

(b) *Applicability date.* The rules of this section apply to returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 7. Section 1.6045-2 is amended by revising paragraphs (g)(2) and (i) to read as follows:

**§1.6045-2 Furnishing statement required with respect to certain substitute payments.**

\* \* \* \* \*

(g) \* \* \*

(2) *Reporting in electronic form.* For information returns filed after December 31, 1996, see §301.6011-2 of this chapter for rules relating to filing information returns in electronic form and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 electronically, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (g)(4) of this section.

\* \* \* \* \*

(i) *Applicability date.* This section applies to substitute payments received by a broker after December 31, 1984. Section 1.6045-2(c) (as contained in 26 CFR part 1, revised July 15, 2014) applies to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, §1.6045-2(c) (as contained in 26 CFR part 1, revised April 2013) applies. Paragraph (g)(2) of this section applies to information returns required to be filed during calendar years beginning after December 31, 2023.

Par. 8. Section 1.6045-4 is amended by removing and reserving paragraph (k) and revising paragraph (s).

The revision reads as follows:

**§1.6045-4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.**

\* \* \* \* \*

(s) *Applicability date.* This section applies for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991. Section 1.6045-4(b)(2)(i)(E), (b)(2)(ii), and (c)(2)(i) (as contained in 26

CFR part 1, revised May 28, 2009) applies to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009. Section 1.6045-4(m)(1) (as contained in 26 CFR part 1, revised July 15, 2014) applies to payee statements due after December 31, 2014. For payee statements due before January 1, 2015, §1.6045-4(m)(1) (as contained in 26 CFR part 1, revised April 2013) applies. The removal of paragraph (k) of this section applies for information returns required to be filed during calendar years beginning after December 31, 2023.

Par. 9. Section 1.6050I-0 is amended by revising the entry in the table of contents for §1.6050I-1(d)(2)(ii) to read as follows:

**§1.6050I-0 Table of contents.**

\* \* \* \* \*

§1.6050I-1 Returns relating to cash in excess of \$10,000 received in a trade or business.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Casinos exempt under 31 CFR 1010.970(c).

\* \* \* \* \*

Par. 10. Section 1.6050I-1 is amended by:

- a. Revising paragraphs (a)(3)(ii), (c)(1)(iv), and (d)(2)(i) and (ii).
- b. In paragraph (d)(2)(iv), redesignating the example as paragraph (d)(2)(iv)(A).
- c. Revising newly redesignated paragraph (d)(2)(iv)(A) and adding a reserved paragraph (d)(2)(iv)(B).
- d. Revising paragraphs (e)(1) and (e)(3)(i).
- e. Adding paragraph (h).

The revisions and additions read as follows:

**§1.6050I-1 Returns relating to cash in excess of \$10,000 received in a trade or business.**

(a) \* \* \*

(3) \* \* \*

(ii) *Exception.* An agent who receives cash from a principal and uses all of the cash within 15 days in a cash transaction (second cash transaction) which is reportable under section 6050I or section 5331 of title 31 of the United States Code and the corresponding regulations (31 CFR Chapter X), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report the initial receipt of cash under this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iv) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as cash pursuant to paragraph (c)(1)(ii)(B)(1) of this section if the instrument constitutes the proceeds of a loan from a bank (as that term is defined in 31 CFR Chapter X).

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) *In general.* If a casino receives cash in excess of \$10,000 and is required to report the receipt of such cash directly to the Department of the Treasury (Treasury Department) under 31 CFR 1021.310 or 1010.360 and is subject to the recordkeeping requirements of 31 CFR 1021.400, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and these regulations.



(ii) *Casinos exempt under 31 CFR 1010.970(c)*. Under the authority of section 6050I(c)(1)(A), the Secretary may exempt from the reporting requirements of section 6050I casinos with gross annual gaming revenue in excess of \$1,000,000 that are exempt under 31 CFR 1010.970(c) from reporting certain cash transactions to the Treasury Department under 31 CFR 1021.310 or 1010.360. The determination whether a casino which is granted an exemption under 31 CFR 1010.970(c) will be required to report under section 6050I will be made on a case-by-case basis, concurrently with the granting of such an exemption.

\* \* \* \* \*

(iv) \* \* \*

(A) *Example*. A and B are casinos having gross annual gaming revenue in excess of \$1,000,000. C is a casino with gross annual gaming revenue of less than \$1,000,000. Casino A receives \$15,000 in cash from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under 31 CFR 1021.310 and 1010.360. Casino B's hotel division receives \$15,000 in cash from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives \$15,000 in cash from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under section 6050I or these regulations because the exception for certain casinos provided in paragraph (d)(2)(i) of this section (casino exception) applies. Casino B's hotel division is required to report under section 6050I and these regulations because the casino exception does not apply to the receipt of cash by a nongaming business division. Casino C is required to report under section 6050I and these regulations because the casino exception does not apply to casinos having gross annual gaming revenue of \$1,000,000 or less which do not have to report to the Treasury Department under 31 CFR 1021.310 and 1010.360.

(B) [Reserved]

\* \* \* \* \*

(e) \* \* \*

(1) *Time of reporting*. The reports required by this section must be filed in accordance with the Form 8300 instructions and related publications by the 15th day after the date the cash is received. However, in the case of multiple payments relating to a single transaction (or two or more related transactions), see paragraph (b) of this section.

\* \* \* \* \*

(3) \* \* \*

(i) *Where to file.* A person making a return of information under this section must file Form 8300 in accordance with the form instructions and related publications.

\* \* \* \* \*

(h) *Applicability date.* The rules of this section apply for returns required to be filed during calendar years beginning after December 31, 2023.

Par. 11. Section 1.6050I-2 is amended by revising paragraphs (c)(1)(i), (c)(3)(i), and (f) to read as follows:

**§1.6050I-2 Returns relating to cash in excess of \$10,000 received as bail by court clerks.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) *In general.* The information return required by this section must be filed in accordance with the Form 8300 instructions and related publications by the 15th day after the date the cash bail is received.

\* \* \* \* \*

(3) \* \* \*

(i) *Where to file.* Returns required by this section must be filed in accordance with the Form 8300 instructions and related publications. A copy of the information return required to be filed under this section must be retained for five years from the date of filing.

\* \* \* \* \*

(f) *Applicability date.* The rules of this section apply for returns required to be filed during calendar years beginning after December 31, 2023.

Par. 12. Section 1.6050M-1 is amended by revising paragraphs (d)(2) and (3) and (f) to read as follows:

**§1.6050M-1 Information returns relating to persons receiving contracts from certain Federal executive agencies.**

\* \* \* \* \*

(d) \* \* \*

(2) *Form of reporting--(i) General rule concerning electronic filing.* The information returns required by this section with respect to contracts of a Federal executive agency for each calendar quarter must be made in one submission (or in multiple submissions if permitted by paragraph (d)(4) of this section). Except as provided in paragraph (d)(2)(ii) of this section, the required returns must be made in electronic form (within the meaning of §301.6011-2(a)(1) of this chapter) in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service for the filing of such returns under section 6050M.

(ii) *Exceptions from electronic filing.* Any Federal executive agency that, on October 1, has a reasonable expectation of entering into, during the one-year period beginning on that date, fewer than 10 contracts subject to the reporting requirements under this section that are to be filed during the calendar years after 2023, may make the information returns required by this section for each quarter of that one-year period on the prescribed paper Form 8596 in accordance with the instructions accompanying such form.

(iii) *Exclusions from electronic-filing requirements--(A) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions,

or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under paragraph (a) of this section) and the period to which it applies.

(B) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Place of filing--(i) Returns in electronic form.* Information returns made under this section in electronic form must be filed with the Internal Revenue Service in accordance with any applicable revenue procedure or other guidance promulgated by the Internal Revenue Service relating to the filing of returns under section 6050M.

(ii) *Form 8596.* Information returns made on paper Form 8596 must be filed with the Internal Revenue Service at the location specified in the instructions for that form.

\* \* \* \* \*

(f) *Applicability date--(1) Contracts required to be reported.* Except as otherwise provided in this paragraph (f), this section applies to each Federal executive agency with respect to its contracts entered into on or after January 1, 1989 (including any increase in amount obligated on or after January 1, 1989, that is treated as a new contract under paragraph (e) of this section).

(2) *Contracts not required to be reported.* A Federal executive agency is not required to report—

(i) Any basic or initial contract entered into before January 1, 1989,

(ii) Any increase contract action occurring before January 1, 1989, that is treated as a new contract under paragraph (e) of this section, or

(iii) Any increase contract action that is treated as a new contract under paragraph (e) of this section if the basic or initial contract to which that contract action relates was entered into before January 1, 1989, and—

(A) The increase occurs before April 1, 1990, or

(B) The amount of the increase does not exceed \$50,000.

(3) *Illustration.* (i) If a Federal executive agency enters into an initial contract on December 1, 1988, and the amount of money obligated under the contract is increased by \$55,000 on April 15, 1990, then there is no reporting requirement with respect to the contract when entered into on December 1, 1988. However, the April 15, 1990, increase, which is treated as a new contract under paragraph (e) of this section, is subject to the reporting requirements of this section because it is considered to be a new contract entered into on April 15, 1990.

(ii) If the \$55,000 increase had occurred before April 1, 1990, there would not have been a reporting requirement with respect to that increase.

(4) *Filing requirements for contracts required to be reported.* Section 1.6050M-1(d)(2) and (3) (as contained in 26 CFR part 1, revised **INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**) applies to information returns required to be filed during calendar years beginning after December 31, 2023.

## **PART 53—FOUNDATION AND SIMILAR EXCISE TAXES**

Par. 13. The authority citation for part 53 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 53.6011-1 also issued under 26 U.S.C. 6011.

\* \* \* \* \*

Par. 14. Section 53.6011-1 is amended by:

a. Removing paragraph (c).

- b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.
- c. Adding a new paragraph (e).

The addition reads as follows:

**§53.6011-1 General requirement of return, statement or list.**

\* \* \* \* \*

(e) The rules of this section apply to any returns required to be filed under this section on or after January 11, 2021.

**PART 54—PENSION EXCISE TAXES**

Par. 15. The authority citation for part 54 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

\* \* \* \* \*

Section 54.6011-3 also issued under 26 U.S.C. 6011.

\* \* \* \* \*

Par. 16. Section 54.6011-3 is added to read as follows:

**§54.6011-3 Required use of electronic form for the filing requirements for the return for certain excise taxes related to employee benefit plans.**

(a) *Excise tax returns required in electronic form.* Any employer or individual required to file an excise tax return on Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, under §54.6011-1 of this chapter must file the excise tax return electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns of any type during the calendar year that the Form 5330 is due. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic-filing requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on

the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §54.6011-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a filer required to file the Form 5330 fails to file the report electronically when required to do so by this section, the filer has failed to file the report. See generally section 6651(a)(1) for the penalty for the failure to file a tax return or to pay tax. For general rules relating to the failure to file a tax return or to pay tax, see the regulations under 26 CFR 301.6651-1 (Regulations on Procedure and Administration).

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue

procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Calculating the number of returns a filer is required to file*—(i) *In general.* For purposes of this section, a filer is required to file at least 10 returns during a calendar year if the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) *Definition of filer.* For purposes of this section, the term *filer* means the person required to report the tax on the Form 5330. For general rules on who is required to report the tax on the Form 5330, see the Instructions to the Form 5330.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(2) of this section:

(1) In 2023, Employer A (the plan sponsor and plan administrator of Plan B) is required to file Form 5330 for its nondeductible contribution under section 4972 to Plan B. During the 2024 calendar year, Employer A is required to file 20 returns (including 19 Forms 1099-R *Distributions From Pensions, Annuities, Retirement, Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, and one Form 5500 series, *Annual Return/Report of the Employee Benefit Plan*). Plan B's plan year is the calendar year. Because Employer A is required to file at least 10 returns during the 2024 calendar year, Employer A must file the 2023 Form 5330 for Plan B electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to any Form 5330 required to be filed for taxable years ending on or after December 31, 2023.

## **PART 301—PROCEDURE AND ADMINISTRATION**

Par. 17. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

\* \* \* \* \*

Section 301.6011-10 also issued under 26 U.S.C. 6011.



Section 301.6011-11 also issued under 26 U.S.C. 6011.

Section 301.6011-12 also issued under 26. U.S.C. 6011.

Section 301.6011-13 also issued under 26 U.S.C. 6011.

Section 301.6011-14 also issued under 26 U.S.C. 6011.

Section 301.6011-15 also issued under 26 U.S.C. 6011.

Section 301.6012-2 also issued under 26 U.S.C. 6012.

\* \* \* \* \*

Section 301.6057-3 also issued under 26 U.S.C. 6011 and 6057.

Section 301.6058-2 also issued under 26 U.S.C. 6011 and 6058.

Section 301.6059-2 also issued under 26 U.S.C. 6011 and 6059.

\* \* \* \* \*

Section 301.6721-1 also issued under 26 U.S.C. 6011 and 6721.

\* \* \* \* \*

Par. 18. Section 301.1474-1 is amended by revising the section heading and paragraphs (a) through (c), (d)(1), and (e) to read as follows:

**§301.1474-1 Required use of electronic form for financial institutions filing Form 1042, Form 1042-S, or Form 8966.**

(a) *Financial institutions filing certain returns.* If a financial institution is required to file a Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, (or successor form) under §1.1474-1(c) of this chapter, the financial institution must file the return information required by the applicable forms and schedules electronically. If a financial institution is required to file a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, (or such other form as the IRS may prescribe) under §1.1474-1(d) of this chapter, the financial institution must file the information required by the applicable forms and schedules electronically. Additionally, if a financial institution is required to file Form 8966, *FATCA Report*, (or such other form as the IRS may prescribe) to report certain information about U.S. accounts, substantial

U.S. owners of foreign entities, or owner-documented FFIs as required under this chapter, the financial institution must file the required information in electronic form. Returns filed electronically must be made in accordance with applicable regulations, revenue procedures, publications, forms, instructions, and the *IRS.gov* internet site. In prescribing regulations, revenue procedures, publications, forms, and instructions, including those on the *IRS.gov* internet site, the Commissioner may direct the type of electronic filing.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.1474-1(c) or (d) of this chapter, or a Form 8966) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a financial institution fails to file a Form 1042 electronically when required to do so by this section, the financial institution has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining

whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply. If a financial institution fails to file a Form 1042-S or a Form 8966 electronically when required to do so by this section, the financial institution has failed to comply with the information reporting requirements under section 6721 of the Code. See section 6724(c) for failure to meet magnetic media requirements. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns on magnetic media) will apply.

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(e) *Applicability date.* This section applies to any Form 1042 (or successor form) required to be filed for taxable years ending on or after December 31, 2023. This section applies to any Form 1042-S or Form 8966 (or any other form that the IRS may prescribe) filed with respect to calendar years ending after December 31, 2013, except that paragraph (b)(2) of this section only applies to Forms 1042-S or Forms 8966 required to be filed for taxable years ending on or after December 31, 2023.

Par. 19. Section 301.6011-2 is amended by revising the section heading and paragraphs (a)(1), (b), (c), and (g) to read as follows:

**§301.6011-2 Required use of electronic form.**

(a) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures or publications, or, in the case of returns filed with the Social Security Administration, Social Security Administration publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, or publications.

\* \* \* \* \*

(b) *Returns required electronically.* (1) If the use of Form 1042-S, Form 1094 series, Form 1095-B, Form 1095-C, Form 1097-BTC, Form 1098, Form 1098-C, Form 1098-E, Form 1098-Q, Form 1098-T, Form 1099 series, Form 3921, Form 3922, Form 5498 series, Form 8027, or Form W-2G is required by the applicable regulations or revenue procedures for the purpose of making an information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this section. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

(2) If the use of Form W-2 (Wage and Tax Statement), Form 499R-2/W-2PR (Withholding Statement (Puerto Rico)), Form W-2VI (U.S. Virgin Islands Wage and Tax Statement), Form W-2GU (Guam Wage and Tax Statement), or Form W-2AS (American Samoa Wage and Tax Statement) is required for the purpose of making an information return, the information required by the form must be submitted electronically, except as otherwise provided in paragraph (c) of this section. Returns described in this paragraph (b)(2) must be made in accordance with applicable Social Security Administration procedures or publications (which may be obtained from the local office of the Social Security Administration).

(3) If a person is required to make a return for the purpose of section 6050l, and such person is required to file returns described in paragraphs (b)(1) and (2) of this

section electronically, then such person must also file the information required by section 6050I electronically. Returns described in this paragraph (b)(3) must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website, as well as instructions and guidance on the *FinCEN.gov* website.

(4) The Commissioner may exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(c) *Electronic-filing threshold--(1) In general.* No person is required to file information returns electronically in a calendar year unless the person is required to file at least 10 returns during that calendar year. Persons required to file fewer than 10 returns during the calendar year may make the returns on the prescribed paper form or, alternatively, electronically in accordance with paragraph (b) of this section.

(2) *Machine-readable forms.* Returns made on a paper form under paragraph (c)(1) of this section must be machine-readable, as described in paragraph (a)(2) of this section, if applicable revenue procedures provide for a machine-readable paper form.

(3) *Special rule for partnerships.* Notwithstanding paragraph (c)(1) of this section, a partnership with more than 100 partners is required to file its information returns covered under paragraph (b) of this section electronically.

(4) *Calculating the number of returns--(i) Aggregation of returns.* In calculating whether a person is required to file at least 10 returns under paragraph (c)(1) of this section, all the information returns described in paragraphs (b)(1) and (2) of this section required to be filed during the calendar year are counted in the aggregate. Neither corrected information returns, information returns described in paragraph (b)(3) of this section, nor returns other than those described in paragraphs (b)(1) and (2) of this

section are taken into account in calculating whether a person is required to file at least 10 returns.

(ii) *Corrected returns.* (A) If an original information return covered by paragraph (b) of this section is required to be filed electronically, any corrected information return corresponding to that original return must also be filed electronically.

(B) If an original information return is permitted to be filed on paper and is filed on paper, any corrected information return corresponding to that original return must be filed on paper.

(5) *Examples.* The provisions of paragraphs (c)(3) and (4) of this section are illustrated by the following examples:

(i) *Example 1.* During the 2024 calendar year, Company W, is required to file five Forms 1099-INT, *Interest Income*, and five Forms 1099-DIV, *Dividends and Distributions*, for a total of 10 returns covered by paragraphs (b)(1) and (2) of this section. Because Company W is required to file 10 returns as calculated under paragraph (c)(4) of this section during the 2024 calendar year, Company W must file all its 2023 Forms 1099-INT and 1099-DIV electronically.

(ii) *Example 2.* Same facts as paragraph (c)(5)(i) of this section (Example 1), except after electronically filing its 10 Forms 1099-DIV and 1099-INT, Company W files two corrected Forms 1099-DIV and four corrected Forms 1099-INT. Because Company W electronically filed its original 2023 Forms 1099-DIV and 1099-INT, Company W must electronically file its corrected 2023 Forms 1099-DIV and 1099-INT.

(iii) *Example 3.* Same facts as paragraph (c)(5)(i) of this section (Example 1), except on May 16, 2024, Company W received cash in excess of \$10,000 and must file a Form 8300 by May 31, 2024. Because Company W is required to file information returns covered under paragraphs (b)(1) and (2) of this section electronically during the 2024 calendar year, Company W must also file all its Forms 8300 electronically during the 2024 calendar year.

(iv) *Example 4.* Same facts as paragraph (c)(5)(i) of this section (Example 1), except Company W is not required to file any Forms 1099-INT during calendar year 2024. On December 19, 2023, Company W receives cash in excess of \$10,000 and must file a Form 8300 by January 3, 2024. Because Company W is not required to file information returns covered under paragraphs (b)(1) and (2) of this section electronically during the 2024 calendar year, Company W is not required to file this Form 8300 electronically.

(v) *Example 5.* During the 2024 calendar year, Partnership P, a partnership with 15 partners, is required to file eight Forms 1099-MISC, *Miscellaneous Information*, and five Forms 1099-INT. Because Partnership P is required to file at least 10 returns covered by paragraphs (b)(1) and (2) of this section during the 2024 calendar year,

Partnership P must electronically file all its 2022 Forms 1099-MISC and 1099-INT.

(6) *Exclusions from electronic-filing requirements--(i) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under paragraph (b) of this section) and the period to which it applies. For purposes of paragraph (b)(3) of this section, a waiver granted for a return under paragraph (b)(1) or (2) will be deemed to have waived the electronic-filing requirement for any returns required to be filed under section 6050I.

(ii) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(iii) *Additional Exclusion.* If an employer is required to make a final return on Form 941, or a variation thereof, and expedited filing of Forms W-2, Forms 499R-2/W-2PR, Forms W-2VI, Forms W-2GU, or Form W-2AS is required, if the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically (see §31.6071(a)-1(a)(3)(ii) of this chapter).

\* \* \* \* \*

(g) *Applicability date.* The rules of this section apply to information returns required to be filed during calendar years beginning after December 31, 2023.

Par. 20. Section 301.6011-3 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d)(1).
- c. Redesignating paragraph (d)(5) as (d)(6) and adding new paragraph (d)(5).
- d. Revising newly redesignated paragraph (d)(6).
- e. Revising paragraphs (e) and (f).

The revisions and addition read as follows:

**§301.6011-3 Required use of electronic form for partnership returns.**

(a) *Partnership returns required electronically.* (1) Except as otherwise provided in paragraph (b) of this section, a partnership required to file a partnership return pursuant to §1.6031(a)-1 of this chapter, must file the information required by the applicable forms and schedules electronically, if

(i) the partnership is required by the Internal Revenue Code or regulations to file at least 10 returns (as described in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the partnership, or

(ii) the partnership has more than 100 partners during the partnership's taxable year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by



which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.6031(a)-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

\* \* \* \* \*

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(5) *Calculating the number of returns.* For purposes of this section, a partnership is required to file at least 10 returns if, during the calendar year ending with or within the taxable year of the partnership, the partnership is required to file at least 10 returns of any type, including income tax returns, employment tax returns, excise tax returns, and

information returns (for example, Forms W-2 and Forms 1099, but not including schedules required to be included with a partnership return). In the case of a short-period return, a partnership is required to file at least 10 returns if, during the calendar year in which the partnership's short taxable year ends, the partnership is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099, but not including schedules required to be included with a partnership return), income tax returns, employment tax returns, and excise tax returns.

(6) *Partnerships with more than 100 partners.* A partnership has more than 100 partners if, over the course of the partnership's taxable year, the partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. For purposes of this paragraph (d)(6), however, only those persons having a direct interest in the partnership must be considered partners for purposes of determining the number of partners during the partnership's taxable year.

(e) *Examples.* The following examples illustrate the provisions of this section. In the examples, the partnerships' taxable year is the calendar year 2023 and the partnerships had fewer than 10 returns required to be filed during calendar year 2023:

(1) *Example 1.* Partnership P had five general partners and 90 limited partners on January 1, 2023. On March 15, 2023, 10 more limited partners acquired an interest in P. On September 29, 2023, the 10 newest partners sold their individual partnership interests to C, a corporation which was one of the original 90 limited partners. On December 31, 2023, P had the same five general partners and 90 limited partners it had on January 1, 2023. P had a total of 105 partners over the course of partnership taxable year 2023. Therefore, P must file its 2023 partnership return electronically.

(2) *Example 2.* Partnership Q is a general partnership that had 95 partners on January 1, 2023. On March 15, 2023, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 29, 2023, corporation D sold one-half of its partnership interest in equal shares to five individuals, who were not previously partners in Q. On December 31, 2023, Q had a total of 91 partners, and on no date in 2023 did Q have more than 100 partners. Over the course of the year, however, Q had 101 partners. Therefore, Q must file its 2023 partnership return electronically.

(3) *Example 3.* Partnership G is a general partnership with 100 partners on January 1, 2023. There are no new partners added to G in 2023. One of G's partners, A, is a partnership with 53 partners. A is one partner, regardless of the number of partners A has. Therefore, G has 100 partners and is not required to file its 2023 partnership return electronically.

(4) *Example 4.* Same facts as paragraph (e)(3) of this section (*Example 3*), except partnership G is also required to file nine Forms 1099-MISC during calendar year 2023 in addition to its 2022 partnership return. Because partnership G is required to file at least 10 returns of any type during calendar year 2023, partnership G must file its 2023 partnership return electronically.

(f) *Applicability date.* The rules of this section apply to partnership returns required to be filed during calendar years beginning after December 31, 2023.

Par. 21. Section 301.6011-5 is amended by revising the section heading, and paragraphs (a), (b), (d)(1) and (5), (e), and (f) to read as follows:

**§301.6011-5 Required use of electronic form for corporate income tax returns.**

(a) *Corporate income tax returns required electronically.* (1) A corporation required to file a corporate income tax return on Form 1120, *U.S. Corporation Income Tax Return*, under §1.6012-2 of this chapter must file its corporate income tax return electronically if the corporation is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the corporation.

(2) All members of a controlled group of corporations must file their corporate income tax returns electronically if the aggregate number of returns required to be filed by the controlled group of corporations is at least 10 (as defined in paragraph (d)(5) of this section) during the calendar year ending with or within the taxable year of the controlled group of corporations.

(3) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on

the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.6012-2 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

\* \* \* \* \*

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(5) *Calculating the number of returns.* For purposes of this section, a corporation or controlled group of corporations is required to file at least 10 returns if, during the calendar year ending with or within the taxable year of the corporation or the controlled group, the corporation or the controlled group is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a corporation is required to file at least 10 returns if, during the calendar year in which the corporation's short taxable year ends, the corporation is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. If the corporation is a member of a controlled group, calculating the number of returns the corporation is required to file includes all returns required to be filed by all members of the controlled group during the calendar year ending with or within the taxable year of the controlled group.

(e) *Example.* The following example illustrates the provisions of this section:

(1) The taxable year of Corporation X, a fiscal-year taxpayer, ends on September 30. During the calendar year ending December 31, 2023, X was required to file one Form 1120, *U.S. Corporation Income Tax Return*, six Forms W-2, *Wage and Tax Statement*, three Forms 1099-DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because X is required to file 10 returns of any type during calendar year 2023, the calendar year that ended within its taxable year ending September 30, 2024, X is required to file its Form 1120 electronically for its taxable year ending September 30, 2024.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to corporate income tax returns required to be filed during calendar years beginning after December 31, 2023.

Par. 22. Section 301.6011-10 is added to read as follows:

**§301.6011-10 Certain organizations, including trusts, required to file unrelated business income tax returns in electronic form.**

(a) *Unrelated business income tax returns required in electronic form.*

(1) Organizations, including trusts, subject to tax under section 511 that are required to file a return under § 1.6012-2(e) or § 1.6012-3(a)(5) of this chapter to report gross income included in computing unrelated business taxable income, as defined in section 512, or that are otherwise required to file Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*, are required to file that return in electronic form.

(2) Returns filed in electronic form must be filed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Failure to file.* If an organization or trust fails to file an unrelated business income tax return in electronic form when required to do so by this section, the organization or trust has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) will apply.

(c) *Applicability date.* The rules of this section apply to unrelated business income tax returns required to be filed during calendar years beginning after **INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

Par. 23. Section 301.6011-11 is added to read as follows:

**§301.6011-11 Required use of electronic form for certain returns for tax-advantaged bonds.**

(a) *Return for credit payments to issuers of qualified bonds.* (1) An issuer of a qualified bond required to file a return for credit payments on Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds*, must file the return electronically if the issuer is required to file at least 10 returns (as determined under paragraph (d) of this section) during the calendar year.

(2) Returns filed electronically must be completed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing a paper return. An issuer's request for a waiver must be submitted in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request must specify the type of filing (that is, the return required to be filed electronically under this section), the name of the issuer, the name of the bond issue, the issue date of the tax-advantaged bond (as defined in §1.150-1(b) of this chapter), and any other information specified in the applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(2) *Exemptions.* The Commissioner may provide an exemption from the electronic-filing requirement of paragraph (a)(1) of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website, to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file a return electronically under this section.

(c) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Qualified bond.* The term *qualified bond* means a tax-advantaged bond that is a taxable bond that provides a refundable Federal tax credit payable directly to the issuer of the bond under former section 6431 or any other tax-advantaged bond (as defined in §1.150-1(b) of this chapter) that provides a refundable Federal tax credit payment to an issuer of such bond.

(3) *Return for credit payments to issuers of qualified bonds.* The term *return for credit payments to issuers of qualified bonds* means a Form 8038-CP, *Return for Credit Payments to Issuers of Qualified Bonds*, or such other form prescribed by the Commissioner for the purpose of filing a return for credit payment with respect to a qualified bond.

(d) *Calculating the number of returns--(1) Aggregation of returns.* For purposes of this section, an issuer of a tax-advantaged bond is required to file at least 10 returns if, during the calendar year, the issuer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(2) *Corrected returns.* (i) If an original return covered by this section is required to be filed electronically, any corrected return corresponding to that original return must also be filed electronically.

(ii) If an original return covered by this section is permitted to be filed on paper and is filed on paper, any corrected return corresponding to that original return must be filed on paper.



(e) *Applicability date.* The rules of this section apply to returns for tax-advantaged bonds filed after December 31, 2023.

Par. 24. Section 301.6011-12 is added to read as follows:

**§301.6011-12 Required use of electronic form for returns of certain excise taxes under Chapters 41 and 42 of the Internal Revenue Code.**

(a) *Excise tax returns required electronically.* (1) Any person required to file an excise tax return on Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, under §53.6011-1 of this chapter must file its excise tax return electronically if the person is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(3) Paragraph (a)(1) of this section is not applicable to private foundations that are subject to the filing requirements of §301.6033-4.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §53.6011-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a person fails to file an excise tax return electronically when required to do so by this section, the person has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Excise tax return.* The term *excise tax return* means a Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, along with all other related forms, schedules, and statements that are required to be attached to the Form 4720, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, a person is required to file at least 10 returns if, during the calendar year ending with or within the person's taxable year, the person is required to file at least 10 returns of any type,

including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a person is required to file at least 10 returns if, during the calendar year in which the person's short taxable year ends, the person is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2023, Trust X was required to file one Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, which related to the 2022 taxable year, and 10 Forms W-2, *Wage and Tax Statement*, which reported wages paid to employees during 2022. Because X is required to file 11 returns during calendar year 2023, X is required to file its Form 4720 electronically for its taxable year ended December 31, 2023.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to excise tax returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 25. Section 301.6011-13 is added to read as follows:

**§301.6011-13 Required use of electronic form for split-interest trust returns.**

(a) *Split-interest trust returns required electronically.* (1) Any trust required to file an information return on Form 5227, *Split-Interest Trust Information Return*, under §53.6011-1 of this chapter must file its return electronically if the trust is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(3) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, or instructions.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §53.6011-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a trust fails to file an excise tax return electronically when required to do so by this section, the trust has failed to file the return. See section 6652 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6652-1(f) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as

magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Split-Interest Trust return.* The term *split-interest trust return* means a Form 5227, *Split-Interest Trust Information Return*, along with all other related forms, schedules, and statements that are required to be attached to the Form 5227, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, a trust is required to file at least 10 returns if, during the calendar year ending with or within the trust's taxable year, the trust is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In the case of a short-period return, a trust is required to file at least 10 returns if, during the calendar year in which the trust's short taxable year ends, the trust is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2023, Trust X was required to file one Form 5227, *Split-Interest Trust Information Return*, one Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*, and 10 Forms 1099-DIV, *Dividends and Distributions*. Because X is required to file 12 returns during the calendar year 2023, X is required to file its Form 5227 electronically for its taxable year ending December 31, 2023.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to Split-Interest Trust returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 26. Section 301.6011-14 is added to read as follows:

**§301.6011-14 Required use of electronic form or other machine-readable form for material advisor disclosure statements.**

(a) *Material advisor disclosure statements required electronically or in other machine-readable form.* (1) Any material advisor required to file a return on Form 8918, *Material Advisor Disclosure Statement*, under §301.6111-3(a) of this chapter must file its return electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, if the material advisor is required by the Internal Revenue Code or regulations to file at least 10 returns (as determined under paragraph (d)(4) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic or other machine-readable form through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically or in other machine-readable form must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §301.6111-3(a) of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS

revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a material advisor fails to file Form 8918 electronically or in other machine-readable form when required to do so by this section, the material advisor has failed to file the return. See section 6707 for the penalty for failure to file the return.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Machine-readable form.* The term *machine-readable form* means any machine-readable form specifically permitted under applicable regulations, procedures, publications, forms, instructions, or other guidance.

(3) *Material advisor disclosure statement.* The term *material advisor disclosure statement* means a Form 8918, *Material Advisor Disclosure Statement*, along with all other related forms, schedules, and statements that are required to be attached to the Form 8918, including amended material advisor disclosure statements.

(4) *Calculating the number of returns.* (i) Except as provided in paragraph (d)(4)(ii) of this section, for purposes of this section, a material advisor is required to file at least 10 returns if during the calendar year the material advisor is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(ii) Form 8918 is not taken into account in calculating whether a material advisor is required to file at least 10 returns during a calendar year.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2024, Material Advisor X was required to file one Form 1040, *U.S. Individual Income Tax Return*, and 10 Forms 1099-NEC, *Nonemployee Compensation*. Because Material Advisor X is required to file 11 returns during the calendar year 2024, X is required to file its Forms 8918 electronically or in other machine-readable form, in accordance with revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website, during the calendar year ending December 31, 2024.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to Material Advisor Disclosure Statements required to be filed after December 31, 2023.

Par. 27. Section 301.6011-15 is added to read as follows:

**§301.6011-15 Required use of electronic form for withholding tax returns.**

(a) *Withholding tax returns required electronically.* (1) A withholding agent required to file an income tax return on Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, under §1.1461-1(b) of this chapter must file its return electronically if the withholding agent is required by the Internal Revenue Code or regulations to file at least 10 returns (as defined in paragraph (d)(5) of this section) during the calendar year in which the Form 1042 is required to be filed. Notwithstanding the previous sentence, a withholding agent that is an individual, estate, or trust is not required to file its Form 1042 electronically.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.



(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.1461-1 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If a withholding agent fails to file a withholding tax return electronically when required to do so by this section, the withholding agent has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as

magnetic tape, tape cartridge, and diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, or instructions.

(2) *Withholding agent.* The term *withholding agent* means a withholding agent as defined in §1.1441-7(a) of this chapter.

(3) *Withholding tax return.* The term *withholding tax return* means a Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, along with all other related forms, schedules, and statements that are required to be attached to the Form 1042, including amended and superseding returns.

(4) *Special rule for partnerships.* Notwithstanding paragraph (d)(5) of this section, a withholding agent that is a partnership with more than 100 partners (as determined under §301.6011-3(d)(6)) is required to file a return described in paragraph (a) of this section electronically.

(5) *Calculating the number of returns.* For purposes of this section, a withholding agent is required to file at least 10 returns if, during the calendar year in which the Form 1042 is required to be filed, the withholding agent is required to file at least 10 returns of any type, including information returns (for example, Forms W-2, Forms 1099, Forms 1042-S), income tax returns (for example, Form 1042), employment tax returns, and excise tax returns.

(e) *Special rule for returns filed by financial institutions.* For rules that require withholding agents that are financial institutions to file returns electronically, see §301.1474-1.

(f) *Applicability date.* The rules of this section apply to withholding tax returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 28. Section 301.6012-2 is added to read as follows:

**§301.6012-2 Required use of electronic form for income tax returns of certain political organizations.**

(a) *Income tax returns of certain political organizations required electronically.*

(1) Any organization required to file an income tax return on Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, under §1.6012-6 of this chapter must file its income tax return, along with all other related forms, schedules, and statements that are required to be attached to the Form 1120-POL, including amended and superseding returns, electronically if the organization is required by the Internal Revenue Code or regulations to file at least 10 returns of any type (as defined in paragraph (d)(2) of this section) during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under §1.6012-6 of this chapter) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A submission claiming an exemption must be made in accordance with applicable IRS

revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

(c) *Failure to file.* If an organization fails to file an income tax return electronically when required to do so by this section, the organization has failed to file the return. See section 6651 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6651-1(c) and rules similar to the rules in §301.6724-1(c)(3) (undue economic hardship related to filing information returns electronically) will apply.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

(2) *Income tax return for certain political organizations.* The term *income tax return for certain political organizations* means a Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, along with all other related forms, schedules, and statements that are required to be attached to the Form 1120-POL, including amended and superseding returns.

(3) *Calculating the number of returns.* For purposes of this section, an organization is required to file at least 10 returns if, during the calendar year ending with or within the organization's taxable year, the organization is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. In

the case of a short-period return, an organization is required to file at least 10 returns if, during the calendar year in which the organization's short taxable year ends, the organization is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section:

(1) During the calendar year ending December 31, 2023, Organization X was required to file one Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*, four (quarterly) Forms 8872, *Political Organization Report of Contributions and Expenditures*, two Forms W-2, *Wage and Tax Statement*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because X is required to file 12 returns during the calendar year, X is required to file its Form 1120-POL electronically for its taxable year ending December 31, 2023.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to income tax returns required to be filed for taxable years ending on or after December 31, 2023.

Par. 29. Section 301.6033-4 is revised to read as follows:

**§301.6033-4 Required filing in electronic form for returns by organizations required to file returns under section 6033.**

(a) *Returns by organizations required to file returns under section 6033 in electronic form.* (1) An organization required to file a return under section 6033 must file its return in electronic form.

(2) Returns filed in electronic form must be filed in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Failure to file.* If an organization required to file a return under section 6033 fails to file an information return in electronic form when required to do so by this section, the organization has failed to file the return. See section 6652 for the addition to tax for failure to file a return. In determining whether there is reasonable cause for failure to file the return, §301.6652-2(f) will apply.

(c) *Meaning of terms.* For purposes of this section the term *return required under section 6033* means a Form 990, *Return of Organization Exempt From Income Tax*; Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*; and Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, along with all other related forms, schedules, and statements that are required to be attached to the Form 990, Form 990-EZ, or Form 990-PF, and all members of the Form 990 series of returns, including amended and superseding returns. A Form 4720 filed by a private foundation is a form required to be filed under section 6033.

(d) *Applicability date.* The rules of this section apply to any returns under section 6033 required to be filed during calendar years beginning after **INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

Par. 30. Section 301.6037-2 is amended by revising the section heading and paragraphs (a), (b), (d)(1) and (5), (e), and (f) to read as follows:

**§301.6037-2 Required use of electronic form for returns of electing small business corporation.**

(a) *Returns of electing small business corporation required electronically.* (1) An electing small business corporation required to file an electing small business return on Form 1120-S, *U.S. Income Tax Return for an S Corporation*, under §1.6037-1 of this chapter must file its Form 1120-S electronically if the small business corporation is required by the Internal Revenue Code and regulations to file at least 10 returns during the calendar year.

(2) The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a return required under section 6037) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. An exemption will be allowed for filers for whom using the technology required to file in electronic form conflicts with their religious beliefs. A submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

\* \* \* \* \*

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(5) *Calculating the number of returns.* For purposes of this section, a corporation is required to file at least 10 returns if, during the calendar year ending with or within the corporation's taxable year, the corporation is required to file at least 10 returns of any type, including income tax returns, employment tax returns, excise tax returns, and information returns (for example, Forms W-2, Forms 1099, but not including schedules required to be attached to an S corporation return). In the case of a short-period return, a corporation is required to file at least 10 returns if, during the calendar year in which the corporation's short taxable year ends, the corporation is required to file at least 10 returns of any type, including information returns (for example, Forms W-2, Forms 1099, but not including schedules required to be attached to an S corporation return), income tax returns, employment tax returns, and excise tax returns.

(e) *Example.* The following example illustrates the provisions of this section. In the example, the corporation is a calendar-year taxpayer.

(1) In 2023, Corporation S, an electing small business corporation, is required to file one 2022 Form 1120-S, *U.S. Income Tax Return for an S Corporation*, two Forms W-2, *Wage and Tax Statement*, two Forms 1099-DIV, *Dividends and Distributions*, one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, and four Forms 941, *Employer's Quarterly Federal Tax Return*. Because S is required to file 10 returns during the calendar year 2023, S is required to file its 2023 Form 1120-S electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to electing small business corporation returns required to be filed during calendar years beginning after December 31, 2023.

Par. 31. Section 301.6057-3 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d)(1).
- c. Revising the heading of paragraph (d)(4) and revising paragraph (d)(4)(i).
- d. In paragraph (e), redesignating the example as paragraph (e)(1).



- e. Revising newly redesignated paragraph (e)(1).
- f. Adding a reserved paragraph (e)(2).
- g. Revising paragraph (f).

The revisions and addition read as follows:

**§301.6057-3 Required use of electronic form for filing requirements relating to deferred vested retirement benefit.**

(a) *Electronic-filing requirements under section 6057.* A registration statement required under section 6057(a) or a notification required under section 6057(b) with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Exclusions from electronic-filing requirements--(1) Waivers.* The Commissioner may grant waivers of the requirements of this section in cases of undue hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, a registration statement or notification under section 6057) and the period to which it applies.

(2) *Exemptions.* The Commissioner may provide exemptions from the requirements of this section to promote effective and efficient tax administration. A

submission claiming an exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

(3) *Additional Exclusion.* If the IRS's systems do not support electronic filing, taxpayers will not be required to file electronically.

\* \* \* \* \*

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(4) *Calculating the number of returns--(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

\* \* \* \* \*

(e) \* \* \*

(1) *Example.* In 2024, P, the plan administrator of Plan B, is required to file 12 returns (including Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*; Form 8955-SSA; Form 5500, *Annual Return/Report of Employee Benefit Plan*; and Form 945, *Annual Return of Withheld Federal Income Tax*). Plan B's plan year is the calendar year. Because P is required to file at least 10 returns during the 2024 calendar year, P must file the 2024 Form 8955-SSA for Plan B electronically.

(2) [Reserved]

(f) *Applicability date.* The rules of this section apply to registration statements and other notifications required to be filed under section 6057 for plan years that begin on or after January 1, 2024.

Par. 32. Section 301.6058-2 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d)(1).
- c. Revising the heading of paragraph (d)(3).
- d. Revising paragraphs (d)(3)(i) and (iii), (e), and (f).

The revisions read as follows:

**§301.6058-2 Required use of electronic form for filing requirements relating to information required in connection with certain plans of deferred compensation.**

(a) *Electronic-filing requirements under section 6058.* A return required under section 6058 with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Returns filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the return electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov*

website. The waiver request will specify the type of filing (that is, a return required under section 6058) and the period to which it applies.

\* \* \* \* \*

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(3) *Calculating the number of returns--(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (for example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns. See section 6011(e)(6), Application of numerical limitation to returns relating to deferred compensation plans.

\* \* \* \* \*

(iii) *Special rules relating to calculating the number of returns.* For purposes of applying paragraph (d)(3)(ii) of this section, the aggregation rules of section 414(b), (c), (m), and (o) will apply to a filer that is or includes an employer. Thus, for example, a filer that is a member of a controlled group of corporations within the meaning of section 414(b) must file the Form 5500 series electronically if the aggregate number of returns required to be filed by all members of the controlled group of corporations is at least 10 returns.

(e) *Example.* The following example illustrates the provisions of paragraph (d)(3) of this section:

(1) In 2024, Employer X (the plan sponsor and plan administrator of Plan A) is required to file 12 returns. The sole shareholder of X and his spouse are the only participants in Plan A. Employer X is required to file the following: one Form 1120, *U.S. Corporation Income Tax Return*; two Forms W-2, *Wage and Tax Statement*; one Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*; four Forms 941, *Employer's Quarterly Federal Tax Return*; one Form 945, *Annual Return of Withheld Federal Income Tax*; and two Forms 1099-DIV, *Dividends and Distributions*. Employer X is required to file one Form 5500-EZ. Plan A's plan year is the calendar year. Because Employer X is required to file at least 10 returns during the 2024 calendar year, the 2024 Form 5500-EZ must be filed electronically.

(2) [Reserved]

(f) *Applicability date*. This section is applicable for returns required to be filed under section 6058 for plan years that begin on or after January 1, 2024.

Par. 33. Section 301.6059-2 is amended by:

- a. Revising the section heading.
- b. Revising paragraphs (a), (b), and (d)(1).
- c. Revising the heading for paragraph (d)(3) and revising paragraph (d)(3)(i).
- d. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e).
- e. Revising newly redesignated paragraph (e).

The revisions read as follows:

**§301.6059-2 Required use of electronic form for filing requirements relating to periodic report of actuary.**

(a) *Electronic-filing requirements under section 6059*. An actuarial report required under section 6059 with respect to an employee benefit plan must be filed electronically if the filer is required by the Internal Revenue Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year. The Commissioner may direct the type of electronic filing and may also exempt certain returns from the electronic requirements of this section through revenue procedures, publications, forms, instructions, or other guidance, including postings on the *IRS.gov* website. Actuarial reports filed electronically must be made in accordance with the applicable revenue procedures, publications, forms, instructions, or other guidance.

(b) *Undue hardship.* The Commissioner may waive the requirements of this section in cases of undue economic hardship. One principal factor in determining hardship will be the amount, if any, by which the cost of filing the reports electronically in accordance with this section exceeds the cost of filing the return on paper. A request for a waiver must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website. The waiver request will specify the type of filing (that is, an actuarial report required under 6059) and the period to which it applies.

\* \* \* \* \*

(d) \* \* \*

(1) *Magnetic media or electronic form.* The terms *magnetic media or electronic form* mean any media or form permitted under applicable regulations, revenue procedures, or publications. These generally include electronic filing, as well as magnetic tape, tape cartridge, diskette, and other media specifically permitted under the applicable regulations, procedures, publications, forms, instructions, or other guidance.

\* \* \* \* \*

(3) *Calculating the number of returns--(i) In general.* For purposes of this section, a filer is required to file at least 10 returns if, during the calendar year that includes the first day of the plan year, the filer is required to file at least 10 returns of any type, including information returns (or example, Forms W-2 and Forms 1099), income tax returns, employment tax returns, and excise tax returns.

\* \* \* \* \*

(e) *Applicability date.* This section is applicable for actuarial reports required to be filed under section 6059 for plan years that begin on or after January 1, 2024.

Par. 34. Section 301.6721-1 is amended by:

a. Revising paragraphs (a)(2)(ii) and (b)(5) introductory text.

- b. Redesignating Examples 1 through 4 in paragraph (d)(5) as paragraphs (b)(5)(i) through (iv).
- c. Revising newly designated paragraphs (b)(5)(iii) and (iv).
- d. Adding paragraphs (b)(5)(v) and (vi) and (h).

The revisions and additions read as follows:

**§301.6721-1 Failure to file correct information returns.**

(a) \* \* \*

(2) \* \* \*

(ii) A failure to include all the information required to be shown on the return or including incorrect information (failure to include correct information). A failure to file timely includes a failure to file in the required manner, for example, electronically or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that the failure occurs with respect to more than 10 returns, or with respect to a return described in section 6011(e)(4). If a partnership return under section 6031(a) is required to be filed electronically, each schedule required to be included with such return with respect to each partner will be treated as a separate information return for purposes of this section. See section 6724(e). Filers who are required to file information returns electronically and who file those information returns electronically are considered to have satisfied the electronic-filing requirement. Except as provided in paragraph (c)(1) or (e)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information-reporting statutes or by any administrative pronouncements (such as regulations, revenue rulings, revenue procedures, or information-reporting forms, and form instructions). A failure to include information in the correct format may be either a failure to file timely an information

return or a failure to include correct information on an information return. For example, an error on an electronic submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the electronic submission, that error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure. For purposes of paragraph (b) of this section, a failure to file corrected information returns in the format required under §301.6011-2(c)(4)(ii) is a failure to correct the corresponding original information returns.

(b) \* \* \*

(5) *Examples.* The provisions of paragraphs (a) and (b)(1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small-business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, adjustments for inflation under section 6721(f), or the reasonable-cause waiver under §301.6724-1(a):

\* \* \* \* \*

(iii) *Example 3.* In calendar year 2024, Corporation U timely files on paper 12 Forms 1099–MISC for the 2023 calendar year with correct information. Under §301.6011-2, a person required to file at least 10 returns during calendar year 2024 must file those returns electronically. Corporation U does not correct its failures to file these returns electronically by August 1, 2024. See section 6721(b)(2). Corporation U is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, under section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely electronically applies only to the extent the number of returns exceeds 10. As Corporation U was required to file 12 returns electronically, it is subject to a penalty of \$500 for two returns ( $\$250 \times 2 = \$500$ ).

(iv) *Example 4.* In calendar year 2024, Corporation W timely electronically files 25 Forms 1099-B (relating to proceeds from broker and barter exchange transactions) with incorrect information. On August 1, 2024, Corporation W discovers the errors and files 25 corrected Forms 1099-B on paper. Under §301.6011-2(c)(4)(ii)(A), a person required to file an original information return covered by §301.6011-2(b) electronically must file any corrected information return corresponding to that original return electronically. Under paragraph (a)(2)(ii) of this section, a failure to file a corrected information return electronically when required to do so is a failure to correct the corresponding original information return. As Corporation W was required to file its 25



corrected information returns electronically, it has failed to correct the original information returns and is subject to a penalty of \$6,250 for failure to include correct information on its 25 original Forms 1099-B ( $\$250 \times 25 = \$6,250$ ), without any reductions for correcting the information on or before August 1.

(v) *Example 5.* During the 2024 calendar year, Corporation V files 25 Forms 1099-B (relating to proceeds from broker and barter exchange transactions) on paper. The forms were filed on March 15, 2024, rather than on the required filing date of February 28, 2024. Under §301.6011-2, a person required to file at least 10 returns during calendar years 2024 and after must file those returns electronically. Corporation V does not correctly file these returns electronically by August 1, 2024. See section 6721(b)(2). Corporation V is subject to a penalty of \$500 for filing 10 of the returns late, but within 30 days after the required filing date ( $\$50 \times 10$ ). In addition, Corporation V is subject to a penalty of \$3,750 for failing to file 15 returns electronically ( $\$250 \times 15$ ).

(vi) *Example 6.* Partnership X has 120 partners in calendar year 2023. In calendar year 2024, it timely filed on paper its 2023 Form 1065 and 230 accompanying Schedules K-1 and Schedules K-3 (120 Schedules K-1 and 110 Schedules K-3). Partnership X filed no other returns during calendar year 2024. Under §301.6011-3(a)(1)(ii), a partnership with more than 100 partners must electronically file its partnership return, including Schedules K-1 and K-3. Under section 6724(e), Schedules K-1 and K-3 are treated as separate information returns for purposes of penalties under section 6721, even though they are not listed under §301.6011-2(b) as information returns required to be filed electronically and are not defined as information returns under section 6724(d). Under section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely electronically applies only to the extent the number of returns exceeds 10. Partnership X would be subject to a penalty of \$55,000 for failing to electronically file 220 Schedules K-1 and K-3 required to be included with the partnership return: the 11th through the 230th of the required schedules ( $\$250 \times 220 = \$55,000$ ). See section 6698 for the penalty for the failure to file the partnership return.

\* \* \* \* \*

(h) *Applicability date.* The rules of paragraph (a)(2)(ii) of this section apply to information returns required to be filed during calendar years beginning after December 31, 2023. For the rules that apply under paragraph (a)(2)(ii) of this section to information returns required to be filed during calendar years beginning before January 1, 2024, see 26 CFR part 301, revised as of April 1, 2022.

Melanie R. Krause,  
Acting Deputy Commissioner for Services and Enforcement.

Approved: August 7, 2022.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

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