

Part IV - Items of General Interest

Form 1120, Form 1120-F, Form 1120S, Form 990, and Form 990-PF Electronic Filing Waiver Request Procedures

Notice 2010-13

Background

This Notice provides procedures for corporations, electing small business corporations, and organizations required to file returns under section 6033 (filers) to request a waiver of the requirement to electronically file Form 1120, U.S. Corporation Income Tax Return; Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; Form 1120S, U.S. Income Tax Return for an S Corporation; Form 990, Return of Organization Exempt From Income Tax; Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation; and returns, amended returns, and superseding returns in the Form 1120 and 990 series of returns when required by regulations and IRS publications. This Notice also includes guidance on the timely filing of a return required to be electronically filed that is rejected.

Section 6011(e) authorizes the Internal Revenue Service (Service) to issue regulations that require an entity to file returns on electronic media when the entity is required to file at least 250 returns during the calendar year. On November 13, 2007, the Treasury Department and the Service issued final regulations that require certain large corporations, electing small business corporations, and organizations required to file returns under section 6033 to electronically file their income tax or annual information returns. T.D. 9363, 72 F.R. 63807.

Under the final regulations, corporations that meet this 250 return threshold and that have assets of \$10 million or more generally must file their Form 1120 or Form 1120S returns electronically for taxable years ending on or after December 31, 2006. Foreign corporations that meet this 250 return threshold and that have assets of \$10 million or more generally must file their Form 1120-F electronically for taxable years ending on or after December 31, 2008.

The final regulations also generally require that tax exempt organizations with assets of \$10 million or more that are required to file returns under section 6033 and that meet

the 250 return threshold file their Form 990 electronically for taxable years ending on or after December 31, 2006. The final regulations further generally require certain tax exempt organizations, private foundations, or section 4947(a)(1) trusts (regardless of asset size) that are required to file returns under section 6033 and that meet the 250 return threshold to file their Form 990-PF electronically for taxable years ending on or after December 31, 2006.

Exclusions from the *e-file* Requirement

Final regulations sections 301.6011-5, 301.6033-4, and 301.6037-2 and IRS publications provide for exceptions and hardship waivers from the electronic filing requirement for corporations, organizations required to file returns under section 6033, and electing small business corporations. IRS Publication 4163, Modernized e-File (MeF) Information for Authorized IRS *e-file* Providers for Business Returns, and IRS Publication 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters, contain instructions for filing corporate and tax-exempt organization returns electronically, and exclude certain types of returns from the electronic filing requirement. For a complete and up to date list of the exclusions or for further information on electronic filing, refer to Publication 4163, Publication 4164, and the IRS.gov Internet site. The Service will post answers to Frequently Asked Questions on this site.

Timely Filing of Rejected e-filed Returns and Perfection Procedures

If the return required to be filed electronically is transmitted on or before the due date (including extensions) and is rejected, but the electronic return originator or the filer comply with the following requirements for timely submission of the return, the return will be considered timely filed and any elections attached to the return will be considered valid. For returns filed on or after January 1, 2010, the Service will allow the filer 10 calendar days from the date of first transmission to perfect the return for electronic resubmission.

If the electronic return cannot be accepted for processing electronically, the filer must file a paper return with the Service Center where it would normally be filed. In order for the paper return to be considered timely, it must be postmarked by the U.S. Postal Service (or a foreign postal service, or in the case of private delivery services designated by Notice 2004-83, 2004-2 C.B. 1030, have a postmark date as determined by Notice 97-26, 1997-1 C.B. 413), or delivered to the Service by the later of the due date of the return (including extensions), or 10 calendar days after the date the Service last gives notification to the filer that the return has been rejected, as long as:

- (1) The first transmission was made on or before the due date of the return (including extensions) and

- (2) The last transmission was made within 10 calendar days of the first transmission.

The paper return must be completed consistent with the instructions to file the return, including providing required information from the taxpayer and include the signature of the tax return preparer, if any. The PIN that was used on the electronically filed return that was rejected may not be used as the signature on the paper return. Corporations, partnerships, and tax-exempt organizations that are required to *e-file* must contact the e-Help Desk ((866) 255-0654) for assistance in correcting rejected returns **before filing a paper return**. If the taxpayer cannot correct the rejected return errors, they must receive authorization from the e-help Desk prior to filing a paper return. However, the taxpayer is not otherwise required to complete a waiver request as discussed below.

If the paper return is postmarked after its due date (including extensions), then the paper return should include an explanation of why the return is being filed after the due date and include a copy of the Service's final rejection notification. Similarly, if the paper return is being submitted by a corporation, partnership, or tax-exempt entity that is required to *e-file* the return, then the return should include an explanation of why the return is being filed in paper form and include a copy of the Service's final rejection notification. A paper return filed in accordance with the above procedures will be considered timely filed, any elections attached to the return will be considered valid, and no penalty will be imposed for failing to *e-file* the return.

The procedures set forth in the preceding paragraphs apply to submissions of paper returns only when the filer has unsuccessfully attempted to *e-file*. Filers who are required to *e-file* but desire to seek a waiver of that requirement under a claim of undue hardship must use the procedures discussed below in order to receive IRS approval of a waiver request.

Requests for Waiver of Electronic Filing Requirement Due to Undue Hardship

When certain filers required to file over 250 returns fail to file electronically as required, those filers may be liable for failure to file penalties under I.R.C. §§ 6651 or 6652, unless the filer can establish that the failure to file the return electronically was due to reasonable cause and not due to willful neglect. The final regulations permit the Service to waive the electronic filing requirement if the filer demonstrates that undue hardship would result if it were required to file its return electronically. The regulations require that filers seeking a waiver should request that waiver in the manner prescribed in applicable revenue procedures or publications.

The Service will approve or deny requests for a waiver of the electronic filing requirement based on each filer's particular facts and circumstances. In determining whether to approve or deny a waiver request, the Service will consider the filer's ability to timely file its return electronically without incurring an undue economic hardship. The

Service will generally grant a waiver where the filer can demonstrate the undue hardship that would result by complying with the electronic filing requirement, including any incremental costs to the filer. Mindful of the software and technological issues in filing electronically, the Service also generally will grant a waiver where technology issues prevent the filer from filing its return electronically. Guidance on situations in which deviations or exclusions from the electronic filing requirement can be made without a waiver is available in IRS Publication 4163, IRS Publication 4164, and on the IRS.gov Internet site.

Elements of a Waiver Request Claiming Undue Hardship

To request a waiver, the filer must file a written request containing the following information:

- (1) A notation at the top of the request stating, in large letters, the type of form followed by the words “*e-file* Waiver Request” (e.g., “Form 1120 *e-file* Waiver Request” or “Form 990 *e-file* Waiver Request”).
- (2) The filer’s name, federal tax identification number, mailing address, contact name, phone number and e-mail address.
- (3) The type of form for which the waiver is requested.
- (4) The taxable year for which the waiver is requested.
- (5) The value of the filer’s total assets at the end of the taxable year as reported (or to be reported) on the entity’s return.
- (6) A detailed statement which lists:
 - a) the steps the filer has taken in an attempt to meet its requirement to timely file its return electronically,
 - b) why the steps were unsuccessful,
 - c) the undue hardship that would result by complying with the electronic filing requirement, including any incremental costs to the filer of complying with the electronic filing requirement. Incremental costs are those costs that are above and beyond the costs to file on paper. The incremental costs must be supported by a detailed computation. The detailed computation must include a schedule detailing the costs to file on paper and the costs to file electronically.
- (7) A statement as to what steps the filer will take to assure its ability to file future returns electronically.

(8) A statement (signed by an officer authorized to sign the return, as defined in section 6062 of the Code) with the following language:

Under penalties of perjury, I declare that the information contained in this waiver request is true, correct and complete to the best of my knowledge and belief.

Requests made by an authorized representative of the filer must include a valid power of attorney.

The waiver request should not be attached to the filer's paper tax return. Extension requests or payments should not be submitted with the waiver request.

Time for Filing a Waiver Request

Filers are encouraged to file electronic filing waiver requests for failure to file a return electronically as soon as possible after it is determined that the filer is unable to electronically file the return or amended return. This will give the Service time to process the waiver request.

Place for Filing a Waiver Request

Until the Service issues further guidance, filers should file a waiver request with the Ogden Submission Processing Center.

Use the following address if using the U.S. Postal Service:

Internal Revenue Service
Ogden Submission Processing Center
Attn: Forms 1120 and 990 *e-file* Waiver Request, Stop 1057
Ogden, UT 84201

Use the following address if using an overnight delivery service:

Internal Revenue Service
Ogden Submission Processing Center
Attn: Forms 1120 and 990 *e-file* Waiver Request, Stop 1057
1973 N. Rulon White Blvd.
Ogden, UT 84404

Filers may also fax the waiver request to the following number: (877) 477-0575.

Approval of the Waiver Request

The Service will review and process waiver requests in a timely manner and will send

the filer written notice of any approval or rejection of the filer's waiver request. The Service will not be considered to have waived the e-filing requirement unless the filer receives written approval from the Service that the waiver request has been approved. In the absence of written approval, a failure to e-file may be subject to penalty unless such failure was due to reasonable cause and not willful neglect.

Effect on Other Documents

This notice supersedes Notice 2005-88, 2005-2 C.B. 1060.

Effective Date

This notice is effective for all returns, including amended and superseding returns, filed after December 31, 2009.

Contact Information

Software developers and vendors may contact the e-Help Desk at (866) 255-0654 with questions about corporate *e-file*. Further information is available on the *e-file* for Charities and Nonprofits webpage at the IRS.gov Internet site.

The principal author of this announcement is Michael Hara of the Office of Associate Chief Counsel (Procedure & Administration). For questions concerning a request for waiver, you may contact the e-Help Desk at (866) 255-0654. To have your call directed to the appropriate area, select the options for e-file questions, business returns, and the form type for which you are calling.