

Part III - Administrative, Procedural, and Miscellaneous

Mandatory E-filing of Form 4720 by Private Foundations

Notice 2021-01

SECTION 1. PURPOSE

This notice provides for the delay, pursuant to section 3101(d)(2) of the Taxpayer First Act of 2019, Pub. L. No. 116-25, 133 Stat. 981, 1015 (TFA), of the application of section 6033(n) of the Internal Revenue Code (Code) with respect to the requirement for organizations recognized as tax exempt under section 501(c)(3) of the Code and classified as private foundations under section 509(a) of the Code (private foundations) to electronically file Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*.¹ This notice also announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to remove § 53.6011-1(c) of the Foundation and Similar Excise Tax Regulations (26 CFR part 53), because the amendments made to sections 6104 and 6033 by the TFA have

¹ Form 4720 is filed by taxpayers reporting tax liabilities under sections 170(f)(10), 664(c)(2), 4911, 4912, 4941, 4942, 4943, 4944, 4945, 4955, 4958, 4959, 4960, 4965, 4966, 4967, and 4968 of the Code.

rendered unfeasible the ability for a private foundation and other persons to jointly file the same Form 4720 electronically.

SECTION 2. BACKGROUND

Section 6011(a) of the Code provides that, when required by regulations prescribed by the Secretary of the Treasury or his delegate (Secretary), any person made liable for any tax imposed by the Code, or with respect to the collection thereof, must make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement must include therein the information required by such forms or regulations. Under § 53.6011-1(b), every person (including a governmental entity) liable for tax imposed by sections 4941(a), 4942(a), 4943(a), 4944(a), 4945(a), 4955(a), 4958(a), 4959, 4960(a), 4965(a), 4966(a), 4967(a), or 4968(a), and every private foundation and every trust described in section 4947(a)(2) which has engaged in an act of self-dealing (as defined in section 4941(d)) (other than an act giving rise to no tax under section 4941(a)) must file an annual return on Form 4720 and must include therein the information required by such form and the instructions issued with respect thereto. Under § 53.6011-1(c), if a Form 4720 is filed by a private foundation or trust described in section 4947(a)(2) with respect to a transaction as to which other persons are also required to file under this regulation, and if the other persons' taxable years are the same as the foundation's or trust's, then the private foundation or trust and such other persons can file a joint Form 4720, and, to the extent applicable, that form will be considered as the other persons' return for purposes

of complying with the filing requirement under § 53.6011-1(b).

Subject to various exceptions, section 6033(a)(1) of the Code requires every organization exempt from taxation under section 501(a) (tax-exempt organization) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe. Section 6033(b) provides a list of items that are generally required to be furnished annually by organizations described in section 501(c)(3), “at such time and in such manner as the Secretary may by forms or regulations prescribe.”

Consistent with section 6033(a)(1), § 1.6033-2(a)(1) of the Income Tax Regulations (26 CFR part 1) provides that, except as provided in section 6033(a)(3) and § 1.6033-2(g), every tax-exempt organization must file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Section 1.6033-2(a)(2)(i) provides that every private foundation must file Form 990-PF, *Return of Private Foundation*, as its annual information return. Although the information to be reported for any particular taxable year is set forth in the forms and instructions for such year, § 1.6033-2(a)(2)(ii) also provides a list of information generally required to be furnished by a tax-exempt organization on its annual return, which generally tracks section 6033(b). The list in the regulations includes, but is not limited to, in the case of a private foundation liable for tax imposed under chapter 42 of

the Code (chapter 42), such information as is required on Form 4720. See § 1.6033-2(a)(2)(ii)(J).

In general, under section 6104(b) of the Code, the information required to be furnished by section 6033, together with the names and addresses of such organizations and trusts, must be made available to the public at such times and in such places as the Secretary may prescribe. Section 301.6104(b)-1(a)(1) of the Procedure and Administration Regulations reiterates that the information required by section 6033 must be made available to the public, except as otherwise provided in section 6104 and the regulations thereunder.

In promulgating § 1.6033-2(a)(2)(ii)(J), the Treasury Department and the IRS noted the provision clarifies that Form 4720 (relating to certain excise tax liabilities under chapter 42), when filed by a private foundation, is part of the information return required under section 6033 as well as a tax return required under section 6011. Accordingly, Form 4720 filed by a private foundation is information required by section 6033 and the regulations thereunder and thus is disclosable under section 6104, whereas Form 4720 filed by a taxpayer other than a private foundation is not information required by section 6033 and the regulations thereunder and thus is not disclosable under section 6104.

See TD 7785, 46 FR 38507 (July 28, 1981).

SECTION 3. MANDATORY ELECTRONIC FILING OF FORM 4720

On July 1, 2019, the TFA was enacted into law. Section 3101 of the TFA is effective for taxable years beginning on or after July 2, 2019. Section 3101(a) of the TFA

amends section 6033(n) of the Code to provide that any exempt organization required to file a return under section 6033 of the Code must file such return in electronic form. Section 3101(c) of the TFA amends section 6104(b) of the Code to provide that any annual return required to be filed electronically under section 6033(n) must be made available by the Secretary to the public as soon as practicable in a machine-readable format. Section 3101(d)(1) of the TFA provides that, in general, these amendments apply to taxable years beginning after the date of enactment of the TFA. However, section 3101(d)(2) of the TFA gives the Secretary authority to delay the application of these amendments if the Secretary determines the application of the amendments would cause undue burden without a delay but the delayed applicability date must not be later than taxable years beginning on or after July 1, 2021.

As described in section 2 of this notice, Form 4720, when filed by a private foundation, is part of the information return required under section 6033, as well as a tax return required under section 6011. Accordingly, Form 4720 filed by a private foundation as part of the Form 990-PF is required to be electronically filed as a return required under section 6033(n). The IRS is modifying Form 4720 so that private foundations can electronically file the form in accordance with the TFA's electronic filing mandate. The modifications to Form 4720 are also necessary to meet the TFA's requirement under section 6104(b) that the Secretary must make available to the public in machine readable format any annual return to be filed electronically under section 6033(n). See section 4 of this notice for the timing implications of these modifications.

Currently, under § 53.6011-1(c) a disqualified person may designate the private foundation's Form 4720 as the disqualified person's return for purposes of complying with the filing requirement under § 53.6011-1(b), provided all persons share the same taxable year. The current regulation assumes the ability of multiple taxpayers to sign the same paper copy of Form 4720. However, that flexibility no longer exists for private foundations and their disqualified persons because section 6033(n) requires private foundations to file Forms 4720 electronically and the IRS system allows for only one taxpayer per return. Thus, the TFA has rendered § 53.6011-1(c), allowing for joint Form 4720 submissions, no longer applicable to private foundations once the Form 4720 is required to be electronically filed by private foundations. Accordingly, the Treasury Department and the IRS intend to propose the removal of § 53.6011-1(c) in a future notice of proposed rulemaking.

SECTION 4. DELAY OF APPLICATION OF ELECTRONIC FILING MANDATE FOR FORMS 4720

The IRS expects that a modified paper version of the Form 4720 will be available for use at the beginning of 2021. Under the authority granted to the Secretary in section 3101(d)(2) of the TFA, private foundations may continue to file the paper version of the Form 4720 until electronic filing of Form 4720 is available and the IRS announces that electronic filing of the Form 4720 is required (expected to be in early 2021). Once electronic filing is required, any Forms 4720 filed by private foundations after such date must be filed electronically in accordance with the instructions to Form 4720 prescribed

by the IRS.

SECTION 5. EFFECTIVE DATE

This notice is effective on January 11, 2021, the publication date of IRB 2021-2.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is William Riker of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, please contact William Riker at (202) 317-5800 or Dave Rifkin at (202) 317-4541 (not toll-free numbers).