

Administrative Exemption from Requirement to Electronically File Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*

Notice 2024-26

SECTION 1. PURPOSE

This notice announces that withholding agents (both U.S. and foreign persons) are administratively exempt from the requirements to electronically file Forms 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, required to be filed in calendar year 2024. Additionally, this notice announces that withholding agents that are foreign persons are administratively exempt from the requirements to electronically file Forms 1042 required to be filed in calendar year 2025. These administrative exemptions are intended to promote effective and efficient tax administration.

SECTION 2. BACKGROUND

Section¹ 1.1461-1(b) requires a withholding agent to file a withholding tax return on Form 1042 for income paid during the preceding calendar year that the withholding agent is required to report on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*. A withholding agent must file Form 1042 on or before March 15

¹ Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code, the Income Tax Regulations (26 CFR part 1), or the Procedure and Administration Regulations (26 CFR part 301).

of the calendar year following the year in which the income was paid. See §1.1474-1(c) for a withholding agent's obligation to report chapter 4 reportable amounts on Form 1042.

Section 6011(e)(1) provides that the Secretary of the Treasury or her delegate (Secretary) shall prescribe regulations providing standards for determining which returns must be filed on magnetic media (which includes electronic filing). Section 6011(e)(2) provides that in prescribing regulations, the Secretary shall not require any person to file returns on magnetic media unless such person is required to file at least the applicable number of returns during the calendar year. Before calendar year 2021, the applicable number of returns for most filers was 250. On July 1, 2019, the President signed into law the Taxpayer First Act (TFA), Public Law 116-25, 133 Stat. 981 (2019). Section 2301 of the TFA amended section 6011(e) by adding to it a new paragraph 5, which authorizes the issuance of regulations that decrease, in accordance with the TFA, the threshold number of returns a taxpayer is required to file during a year at, or above, which the taxpayer is required to file electronically. Under the TFA, for calendar years after 2021, the applicable number of returns is 10.

On February 23, 2023, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published final regulations in the **Federal Register** (TD 9972, 88 FR 11754) (final regulations) on electronic-filing rules for certain returns and other documents that implemented the amendments to section 6011(e) made by the TFA. The final regulations include a provision for the electronic-filing of

Forms 1042 that amended §1.1461-1 and added §301.6011-15, which require a withholding agent, except an individual, estate, or trust, to electronically file Form 1042 if the withholding agent is required to file 10 or more returns of any type during the same calendar year in which Form 1042 is required to be filed. Section 301.6011-15 also requires a withholding agent that is a partnership with more than 100 partners to file Form 1042 electronically regardless of the number of returns the partnership is required to file during the calendar year. Additionally, the final regulations amended §§1.1474-1 and 301.1474-1 to require a withholding agent that is a financial institution to file Form 1042 electronically without regard to the number of returns it is required to file during the calendar year.

The final regulations also authorize the Commissioner of Internal Revenue (Commissioner) to provide exemptions from the electronic-filing requirements to promote effective and efficient tax administration. See §§301.1474-1(b)(2) and 301.6011-15(b)(2). The final regulations provide that the electronic-filing requirements apply to Forms 1042 required to be filed for taxable years ending on or after December 31, 2023. Accordingly, the final regulations require withholding agents to apply these requirements beginning with Forms 1042 due on or after March 15, 2024.

Since the publication of the final regulations, the IRS has received feedback from withholding agents noting challenges in transitioning to the procedures necessary for filing Forms 1042 electronically. Among the concerns expressed are the limited number of Approved IRS Modernized e-File Business Providers for Form 1042, coupled with

difficulties accessing the schema and business rules for filing Form 1042 electronically. For withholding agents that do not rely on Modernized e-File Business Providers for their electronic-filing requirements, the feedback notes that additional time is needed to upgrade their systems for filing Forms 1042 on the IRS's Modernized e-File platform. Withholding agents requested a deferral of the Form 1042 electronic-filing requirements in light of these concerns. Additionally, withholding agents noted challenges specific to foreign persons filing Forms 1042 with respect to implementing the authentication requirements necessary for accessing the IRS's Modernized e-File platform.

SECTION 3. ADMINISTRATIVE EXEMPTION FROM REQUIREMENTS TO FILE CERTAIN FORMS 1042 ELECTRONICALLY

.01 Administrative Exemption from Requirement for Withholding Agents to File Forms 1042 Electronically During Calendar Year 2024

As described in section 2 of this notice, pursuant to certain provisions in the relevant Treasury regulations, the Commissioner may provide an exemption from the requirement to electronically file Form 1042 in the interest of effective and efficient tax administration. As a result, withholding agents (both U.S. and foreign persons) are not required to file Forms 1042 electronically during calendar year 2024. Specifically, pursuant to §§1.1461-1(i) and 301.6011-15(b)(2), a withholding agent required to file Form 1042 that is not a financial institution and is required to file at least 10 returns (as determined under §301.6011-15(d)(5)) in 2024 is administratively exempt from the requirement to electronically file Form 1042 during calendar year 2024. Additionally, pursuant to §§1.1461-1(i) and 301.6011-15(b)(2), a partnership required to file Form

1042 that has more than 100 partners is administratively exempt from the requirement to electronically file Form 1042 during calendar year 2024. Finally, pursuant to §§1.1474-1(e) and 301.1474-1(b)(2), a financial institution required to file Form 1042 is administratively exempt from the requirement to file Form 1042 electronically during calendar year 2024. A Form 1042 timely submitted on paper in calendar year 2024 will not be a failure to file Form 1042, and, therefore, no addition to tax under section 6651(a)(1) will apply with respect to an otherwise valid Form 1042 timely submitted on paper in calendar year 2024 (with no electronic-filing waiver request required).

.02 Additional Administrative Exemption from Requirement for Foreign Withholding Agents to File Forms 1042 Electronically During Calendar Year 2025

As described in section 2 of this notice, pursuant to certain provisions in relevant Treasury regulations, the Commissioner may provide an exemption from the requirement to electronically file Form 1042 in the interest of effective and efficient tax administration. As a result, withholding agents that are foreign persons are not required to file Forms 1042 electronically during calendar year 2025. Specifically, pursuant to §§1.1461-1(i) and 301.6011-15(b)(2), a foreign person required to file Form 1042 that is not a financial institution and is required to file at least 10 returns (as determined under §301.6011-15(d)(5)) in 2025 is administratively exempt from the requirement to electronically file Form 1042 during calendar year 2025. Additionally, pursuant to §§1.1461-1(i) and 301.6011-15(b)(2), a foreign partnership required to file Form 1042 that has more than 100 partners is administratively exempt from the requirement to

electronically file Form 1042 during calendar year 2025. Finally, pursuant to §§1.1474-1(e) and 301.1474-1(b)(2), a foreign financial institution required to file Form 1042 is administratively exempt from the requirement to electronically file Form 1042 during calendar year 2025. A Form 1042 timely submitted on paper by a foreign person in calendar year 2025 will not be a failure to file Form 1042, and, therefore, no addition to tax under section 6651(a)(1) will apply with respect to an otherwise valid Form 1042 timely submitted on paper by a foreign person in calendar year 2025 (with no electronic-filing waiver request required).

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is W. Shawver Adams of the Office of Associate Chief Counsel (International). For further information regarding this notice contact W. Shawver Adams at (202) 317-5132 (not a toll-free call).