

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

T.D. 9518, page 710.

Final regulations relate to the requirement for “specified tax return preparers,” generally tax return preparers who reasonably expect to file more than 10 individual income tax returns in a calendar year (100 or more in 2011), to file individual income tax returns using magnetic media (electronically) pursuant to section 6011(e)(3) of the Code.

Notice 2011-26, page 720.

This notice informs tax return preparers of administrative exemptions from the electronic filing requirement under section 6011(e)(3) of the Code and regulation sections 1.6011-7 and 301.6011-7.

Notice 2011-27, page 723.

Solely for calendar year 2011, this notice provides transitional guidance relating to the new electronic filing requirement under section 6011(e)(3) of the Code and corresponding regulations, specifically regarding the filing restrictions placed upon specified tax return preparers by that Code section and regulation section 301.6011-7(a)(4)(i). The notice allows a specified tax return preparer to mail any individual income tax returns in paper format to the IRS, at the request of a taxpayer, if the preparer obtains a signed statement containing the taxpayer’s choice to have the return filed in paper format, and the taxpayer’s request to have the preparer mail the return to the IRS.

Notice 2011-30, page 724.

2010 nonconventional source fuel credit, section 45K inflation adjustment factor, and section 45K reference price. This notice announces the inflation adjustment factor, the reference price, and the credit amount for the nonconven-

tional source fuel credit for coke or coke gas (other than from petroleum based products) for the 2010 calendar year.

Notice 2011-31, page 724.

This notice provides guidance to taxpayers regarding how to answer questions related to foreign financial accounts (FFAs), found on 2010 federal income tax and information returns, e.g., Schedule B of Form 1040, the “Other Information” section of Form 1040, Schedule B of Form 1065, and Schedule N of Form 1120, among others.

Rev. Proc. 2011-25, page 725.

This procedure provides guidance to specified tax return preparers regarding the time for filing and manner (form and content) of requests for waiver of the electronic filing requirement due to undue hardship, under section 6011(e)(3) of the Code and regulation sections 1.6011-7 and 301.6011-7. The procedure also provides guidance regarding how to document a taxpayer’s choice to file the taxpayer’s individual income tax return in paper format when the return is prepared by the preparer but filed by the taxpayer.

ESTATE TAX

Notice 2011-31, page 724.

This notice provides guidance to taxpayers regarding how to answer questions related to foreign financial accounts (FFAs), found on 2010 federal income tax and information returns, e.g., Schedule B of Form 1040, the “Other Information” section of Form 1040, Schedule B of Form 1065, and Schedule N of Form 1120, among others.

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ADMINISTRATIVE

T.D. 9518, page 710.

Final regulations relate to the requirement for “specified tax return preparers,” generally tax return preparers who reasonably expect to file more than 10 individual income tax returns in a calendar year (100 or more in 2011), to file individual income tax returns using magnetic media (electronically) pursuant to section 6011(e)(3) of the Code.

Notice 2011-16, page 720.

This notice provides an extension of time to pay tax until October 17, 2011, to eligible civilian spouses of military servicemembers who work in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands (each a “U.S. territory”) and claim residence or domicile for tax purposes in a state or the District of Columbia pursuant to the Military Spouses Residency Relief Act (MSRRA). In addition, this notice provides that civilian spouses of military servicemembers working in a state or the District of Columbia but claiming residence or domicile for tax purposes in a U.S. territory under MSRRA should follow the procedures in Notice 2010-30 with respect to their 2010 individual income tax returns.

Notice 2011-26, page 720.

This notice informs tax return preparers of administrative exemptions from the electronic filing requirement under section 6011(e)(3) of the Code and regulation sections 1.6011-7 and 301.6011-7.

Notice 2011-27, page 723.

Solely for calendar year 2011, this notice provides transitional guidance relating to the new electronic filing requirement under section 6011(e)(3) of the Code and corresponding regulations, specifically regarding the filing restrictions placed upon specified tax return preparers by that Code section and regulation section 301.6011-7(a)(4)(i). The notice allows a specified tax return preparer to mail any individual income tax returns in paper format to the IRS, at the request of a taxpayer, if the preparer obtains a signed statement containing the taxpayer’s choice to have the return filed in paper format, and the taxpayer’s request to have the preparer mail the return to the IRS.

Notice 2011-31, page 724.

This notice provides guidance to taxpayers regarding how to answer questions related to foreign financial accounts (FFAs), found on 2010 federal income tax and information returns, e.g., Schedule B of Form 1040, the “Other Information” section of Form 1040, Schedule B of Form 1065, and Schedule N of Form 1120, among others.

Rev. Proc. 2011-25, page 725.

This procedure provides guidance to specified tax return preparers regarding the time for filing and manner (form and content) of requests for waiver of the electronic filing requirement due to undue hardship, under section 6011(e)(3) of the Code and regulation sections 1.6011-7 and 301.6011-7. The procedure also provides guidance regarding how to document a taxpayer’s choice to file the taxpayer’s individual income tax return in paper format when the return is prepared by the preparer but filed by the taxpayer.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and en-

force the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 6011.—General Requirement of Return, Statement, or List

26 CFR 1.6011-7: Specified tax return preparers required to file individual income tax returns using magnetic media.

T.D. 9518

DEPARTMENT OF THE
TREASURY
Internal Revenue Service
26 CFR Parts 1 and 301

Specified Tax Return Preparers Required to File Individual Income Tax Returns Using Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the requirement for “specified tax return preparers” to file individual income tax returns using magnetic media pursuant to section 6011(e)(3) of the Internal Revenue Code (Code). The final regulations reflect changes made to the law by the Worker, Homeownership, and Business Assistance Act of 2009. These regulations provide guidance to specified tax return preparers who prepare and file individual income tax returns. Unless an exception in these regulations applies, a tax return preparer who meets the definition of a “specified tax return preparer” must electronically file Federal income tax returns that the preparer prepares and files for individuals, trusts, and estates. These regulations provide a two-year transition period for certain specified tax return preparers.

DATES: *Effective Date:* These regulations are effective on March 30, 2011.

Applicability Dates: In accordance with sections 7805(b)(1)(B) and (b)(2) and section 6011(e)(3), these regulations are applicable to individual income tax returns filed after December 31, 2010. See §301.6011-7(g).

FOR FURTHER INFORMATION CONTACT: Keith L. Brau, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2201. The collection of information in these final regulations is in §301.6011-7(a)(4)(ii). This taxpayer choice statement information will be used by tax return preparers and specified tax return preparers to demonstrate to the IRS that the related individual income tax returns filed in paper format were not required to be filed electronically pursuant to section 6011(e)(3), §1.6011-7, and §301.6011-7. The collection of information is voluntary to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Regulations on Income Taxes (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) under section 6011(e) of the Code relating to the requirement for specified tax return preparers to file individual income tax returns using magnetic media (electronically). Section 17 of the Worker, Homeownership, and Business Assistance Act of 2009 (Public Law 111-92 (123 Stat. 2984, 2996)) amended section 6011(e)(1) and added new section 6011(e)(3) as an exception to the restriction in section

6011(e)(1) that the Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be filed in any format other than paper forms supplied by the Secretary. New section 6011(e)(3) provides that the Secretary shall require the filing on magnetic media of any individual income tax returns prepared and filed by a specified tax return preparer. Section 6011(e)(3)(B) defines a *specified tax return preparer* as, with respect to any calendar year, any tax return preparer unless such preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year. Section 6011(e)(3) does not define the term “filed.”

Under section 6011(e)(3)(C), an *individual income tax return* is any return of the tax imposed by subtitle A on individuals, estates, and trusts. This includes any return of income tax in the Form 1040 series and Form 1041 series. It also includes Form 990-T (*Exempt Organization Business Income Tax Return*) when the exempt organization is a trust subject to tax on unrelated business taxable income under section 511(b). At this time, certain individual income tax returns such as Form 990-T, Form 1040-NR (*U.S. Nonresident Alien Income Tax Return*), Form 1041-QFT (*U.S. Income Tax Return for Qualified Funeral Trusts*), and all amended individual income tax returns, such as Form 1040X (*Amended U.S. Individual Income Tax Return*), cannot be filed electronically and, therefore, currently are exempt from the electronic filing requirement. See §301.6011-7(c)(2) and Notice 2011-26.

A notice of proposed rulemaking (REG-100194-10, 2010-51 I.R.B. 891) was published in the **Federal Register** (75 FR 75439) on December 3, 2010. That document proposed to amend the regulations under section 6011(e) by adding new §§1.6011-6 and 301.6011-6. These sections would provide guidance on the electronic filing requirement contained in section 6011(e)(3), including, but not limited to, the following: (1) clarifying the definition of a *specified tax return preparer* as any person who is a tax return preparer, as defined in section 7701(a)(36)

and §301.7701-15, unless the tax return preparer reasonably expects to file 10 or fewer individual income tax returns in a calendar year, and if a person who is a tax return preparer is a member of a firm, that person would be a specified tax return preparer unless the person's firm members in the aggregate reasonably expect to file 10 or fewer individual income tax returns in a calendar year; (2) providing a definition of the term *file* based on whether the tax return preparer or specified tax return preparer submits the individual income tax return to the IRS; (3) recognizing a taxpayer's ability to choose to file an individual income tax return in paper format and providing that a tax return preparer or a specified tax return preparer is not considered to have filed an individual income tax return if the preparer obtains a signed writing from the taxpayer attesting that the taxpayer chooses to file the individual income tax return in paper format and the taxpayer, and not the preparer, will file (submit) the individual income tax return to the IRS; (4) providing exclusions from the electronic filing requirement for individual income tax returns filed in paper format pursuant to an undue hardship waiver or administrative exemption; (5) giving examples of the application of the proposed rules; and (6) providing a two-year transition rule for the implementation of section 6011(e)(3). For calendar year 2011, the proposed regulations would define a *specified tax return preparer* as a tax return preparer who reasonably expects to file (or if the tax return preparer is a member of a firm, the firm's members in the aggregate reasonably expect to file) 100 or more individual income tax returns during the year, while beginning January 1, 2012, a *specified tax return preparer* would be a tax return preparer who reasonably expects to file (or if the tax return preparer is a member of a firm, the firm's members in the aggregate reasonably expect to file) 11 or more individual income tax returns in a calendar year.

Concurrently with publication of the proposed regulations, the IRS released Notice 2010-85, see IR-2010-116 (December 1, 2010) and 2010-51 I.R.B. 877 (December 20, 2010), which contained a proposed revenue procedure that would provide guidance to tax return preparers

regarding the format and content of undue hardship waiver requests and taxpayer choice statements.

Written comments were received by the Treasury Department and the IRS in response to the notice of proposed rulemaking and concurrent notice. A public hearing was held on January 7, 2011. Commentators appeared at the public hearing and commented on the notice of proposed rulemaking and Notice 2010-85. All comments were considered and are available for public inspection at www.regulations.gov or upon request. This preamble addresses all substantive comments received by the Treasury Department and the IRS. After consideration of the written comments and the comments provided at the public hearing, the proposed regulations under section 6011(e)(3) are adopted as revised by this Treasury decision. The revisions are discussed in this preamble. In addition, although not discussed in the preamble, a few minor, non-substantive changes were made to the text of the final regulations to conform the language used throughout the regulations. Further, the "1.6011-6" and "301.6011-6" numbering used in the proposed regulations have been changed to "1.6011-7" and "301.6011-7" in these final regulations because "301.6011-6" was used in another proposed regulation, proposed §301.6011-6 (Statement of series and series organizations), which is unrelated to these regulations.

Concurrent with the publication of these regulations, the IRS is publishing a revenue procedure providing guidance to tax return preparers regarding the format and content of undue hardship waiver requests and taxpayer choice statements under §301.6011-7(c)(1) and §301.6011-7(a)(4)(ii), a notice containing administrative exemptions to the electronic filing requirement under §301.6011-7(c)(2), and a transition notice regarding the mailing of individual income tax returns by specified tax return preparers during the 2011 calendar year.

Summary of Comments

Fifty-three written comments were received in response to the notice of proposed rulemaking and Notice 2010-85, and two commentators spoke at the public hearing.

1. Definition of a Specified Tax Return Preparer

The proposed regulations do not apply to individuals described in section 7701(a)(36)(B)(i) through (iv) and §301.7701-15(f) who are not defined as tax return preparers under that Code section and regulation, such as an individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program or a person who prepares a return as a fiduciary. One commentator stated that section 6011(e)(3) made no distinction with respect to whether the tax return preparer is compensated and requested that the final regulations delete the phrase "as defined in section 7701(a)(36) and §301.7701-15" so that the rules would apply to any tax return preparer who prepares and files the requisite number of individual income tax returns. The final regulations do not adopt this recommendation. Section 7701(a) provides that "[w]hen used in this title, where not otherwise directly expressed or manifestly incompatible with the intent thereof," the definition of "tax return preparer" is that which is provided by that Code section. Section 6011(e)(3) does not define "tax return preparer," nor is the definition provided by section 7701(a)(36) "manifestly incompatible with the intent" of section 6011(e)(3). These final regulations therefore adopt the definition set forth in section 7701(a)(36) and its corresponding regulations. See §301.6011-7(a)(3).

One commentator suggested that the definition of *specified tax return preparer* should be applied solely on a firm basis, not on an individual basis, and the individual income tax returns a tax return preparer prepares independently for the preparer's own business should not be aggregated with any individual income tax returns that the same person prepares as an employee for a firm. For example, if a tax return preparer prepares and files 60 individual income tax returns (that is, fewer than 100 in 2011) while working as an employee of a firm, and independently prepares and files 60 individual income tax returns as a sole proprietor, the commentator believes the tax return preparer should not be subject to the electronic filing requirement for the latter returns. The Treasury Department and the IRS do not adopt this approach in the final regula-

tions. The suggested approach would not be consistent with the statute. Congress placed the electronic filing responsibility of section 6011(e)(3) on each individual tax return preparer who reasonably expects to prepare and file more than 10 individual income tax returns in a calendar year.

Other commentators stated that the reasonable expectation for filing individual income tax returns in a calendar year should be determined solely at the individual tax return preparer level and not take into consideration the individual income tax returns prepared and filed by other tax return preparers in the firm. Under the proposed regulations, in the above example, the individual income tax returns that the other members of the firm expect to prepare and file would be aggregated with the 60 individual income tax returns that the above-mentioned person expects to prepare and file as an employee of the firm. Firm aggregation rules were included in the proposed regulations to limit avoidance of the statutory requirement, for example, by a firm purposely arranging its workload to prevent one or more of its tax return preparers from becoming a specified tax return preparer under section 6011(e)(3). As a result, the Treasury Department and the IRS do not adopt the commentators' recommendation and have maintained the proposed firm aggregation rules in the final regulations. See §301.6011-7(a)(3) and §301.6011-7(d).

Instead of determining the reasonable filing expectation based on the individual income tax returns reasonably expected to be filed in the calendar year, another commentator recommended that the reasonable filing expectation be determined based solely on the number of individual income tax returns filed in the immediately preceding year. This comment is not adopted. Section 6011(e)(3)(B), and not the regulations, establishes the reasonable expectation standard. Further, the Treasury Department and the IRS have concluded that the number of individual income tax returns filed in the immediately preceding year may be a relevant factor but should not be the only factor in making a reasonable expectation determination for a calendar year.

2. Definition of File

a. Mailing paper returns for taxpayer-clients

Several commentators opposed the requirement that individual income tax returns prepared and filed by a specified tax return preparer be filed electronically. These commentators stated that they sometimes mail to the IRS the paper tax returns that they prepare for their clients as a service for their clients, often for those who are elderly, incapacitated, on travel, or in other situations in which it would not be practical or convenient to have the client mail the return to the IRS. For some of these clients, the individual income tax return may be unusually large in size or a filing due date may be imminent. For similar reasons, other commentators objected to the requirement in proposed §301.6011-6(a)(4)(ii) that a taxpayer, not the specified tax return preparer, must submit the paper individual income tax return to the IRS when the taxpayer chooses to file in paper format. They recommended that this requirement be eliminated, or, if the clients choose to have their individual income tax returns prepared in paper format and sign a statement documenting that choice, the specified tax return preparers should be able to mail those returns if the clients request this additional service from them.

Congress established the requirement that any individual income tax return prepared by a tax return preparer be filed on magnetic media (electronically) if such individual income tax return is filed by the tax return preparer and the preparer is a specified tax return preparer for the calendar year during which the individual income tax return is filed. The language that Congress used in the statute, in particular section 6011(e)(3)(A)(i) and (B), specifically refers to the act of "filing" the individual income tax return by the tax return preparer or specified tax return preparer. The statute did not, however, define the term "file." The Treasury Department and the IRS believe that, with respect to paper returns, a definition of the term *file* based on the act of the tax return preparer or specified tax return preparer (or a member of the preparer's firm) submitting the individual income tax return is reasonable and necessary to give effect to

the electronic filing requirement enacted by Congress. Otherwise, the requirement would have no meaning or consequence. As a result, the Treasury Department and the IRS do not adopt the commentators' recommendations that the mailing restrictions be eliminated. Consistent with section 6011(e)(3), the final regulations provide that tax return preparers qualify as specified tax return preparers if they (or their firm) reasonably expect to file, that is, submit to the IRS, the specified number of individual income tax returns, and even if the tax return preparers file more than the specified number of individual income tax returns and therefore qualify as specified tax return preparers, these preparers need not electronically file an individual tax return if they (or their firm) do not file the return, that is, submit it to the IRS, as defined in the regulations. See §301.6011-7(a)(4).

The Treasury Department and the IRS recognize that the mailing restriction may create unforeseen or unavoidable difficulties for immediate compliance, particularly in situations in which specified tax return preparers have customarily mailed individual income tax returns to the IRS as part of the specified tax return preparer's general business practice, or in which they mail a client's paper individual income tax return to the IRS on the client's behalf due to special circumstances, for example, the disability, incapacitation or infirmity of the client. Under these final regulations the IRS has the authority to issue additional guidance in the form of announcements, notices, or FAQs to address issues related to the filing of a taxpayer's individual income tax return under section 6011(e)(3) that will promote fair and efficient tax administration. In response to the public comments and concurrent with the publication of these regulations, the IRS is also publishing a transition notice regarding the mailing of individual income tax returns by specified tax return preparers during the 2011 calendar year. Solely for calendar year 2011, a specified tax return preparer who prepares individual income tax returns may mail any such return in paper format to the IRS, at the request of the taxpayer, subject to the conditions specified in Notice 2011-27. The specified tax return preparer must obtain a signed and dated statement from the taxpayer containing the taxpayer's choice to have the individual income tax return filed in paper

format, and the taxpayer's unambiguous request to have the specified tax return preparer mail the individual income tax return to the IRS. See Notice 2011-27 for details.

b. Acts of assistance beyond providing filing or delivery instructions to taxpayers

The definition of *file* in the proposed regulations would include the submission by the tax return preparer or specified tax return preparer of an individual income tax return, either electronically (e-filed) or in paper format. Submission in non-electronic (paper) form would include "the direct or indirect transmission, sending, mailing or otherwise delivering of the paper tax return to the IRS by the preparer...and includes any act or acts of assistance beyond providing filing or delivery instructions to the taxpayer." Several commentators expressed confusion as to which acts of assistance would amount to filing by the tax return preparer. For example, if a tax return preparer provides the client with an addressed envelope or proper postage to make sure the postage is correct, but the client physically mails the individual income tax return, would that be considered filing by the tax return preparer? In response to these commentators' concerns, the phrases "direct or indirect" and "and includes any act or acts of assistance beyond providing filing or delivery instructions to the taxpayer" were deleted from the final regulations. Acts such as providing filing or delivery instructions, an addressed envelope, postage estimates, stamps, or similar acts designed to assist the taxpayer in the taxpayer's efforts to correctly mail or otherwise deliver an individual income tax return to the IRS do not constitute filing by the tax return preparer or specified tax return preparer as long as the taxpayer actually mails or otherwise delivers the paper individual income tax return to the IRS.

3. Taxpayer Choice Statements to File in Paper Format

The proposed regulations contain a provision that would provide taxpayers, who have their individual income tax returns prepared by a tax return preparer, the choice to have those returns filed in paper format. In particular, proposed

§301.6011-6(a)(4)(ii) states that an individual income tax return would not be considered to be filed by a tax return preparer or specified tax return preparer if the preparer obtained, on or prior to the date the individual income tax return is filed, a signed and dated written statement from the taxpayer, stating the taxpayer chooses to file the individual income tax return in paper format, and that the taxpayer, and not the preparer, would submit the paper individual income tax return to the IRS. Further, this statement would have to be signed by both spouses if it was a joint return.

a. Taxpayer choice statement form

The Treasury Department and the IRS received several comments supporting a taxpayer's choice to file an individual income tax return in paper format. Some commentators, however, questioned the need for the taxpayer choice statement, especially for tax return preparers who never mail individual income tax returns to the IRS on behalf of their clients, but instead give the returns to their clients to mail to the IRS. According to these comments, under the proposed regulations, the electronic filing requirement would apply only to specified tax return preparers, that is, those who file the requisite number of individual income tax returns. In their view, if the tax return preparer never files individual income tax returns on behalf of clients, or files ten or fewer (fewer than 100 in 2011), the tax return preparer would not meet the definition of a "specified tax return preparer," and should not have to obtain a taxpayer choice statement from these clients.

The burden of compliance with the electronic filing requirement is on the tax return preparer and specified tax return preparer. Neither the fact that the IRS receives a taxpayer's paper individual income tax return in the mail nor the fact that the tax return preparer's or specified tax return preparer's general business practice is to not mail paper individual income tax returns for clients necessarily establishes that the preparer did not file a particular individual income tax return with the IRS. See Revenue Procedure 2011-25. Based on the above, the Treasury Department and the IRS adopt proposed §301.6011-6(a)(4)(ii) in the

final regulations, except for the modification described in paragraph 3.b of this preamble. If the tax return preparer or specified tax return preparer obtains a signed statement in compliance with the requirements established in Revenue Procedure 2011-25, the signed statement will demonstrate compliance with the electronic filing requirement should the IRS question a preparer about the filing of a particular individual income tax return in paper format.

b. Only one spouse is required to sign the taxpayer choice statement for a joint return

Several commentators recommended that only one spouse, instead of both spouses, should be required to sign the taxpayer choice statement related to a joint individual income tax return. They expressed concerns that the two-signature requirement might not be practical in some cases, for example, when one spouse is unable to sign due to a health condition, or not available because of distance due to a temporary absence from the spouse's customary residence. Although the Treasury Department and the IRS continue to encourage tax return preparers to obtain both spouses' signatures on the taxpayer choice statement as a best practice, the commentators' recommendation that one spouse's signature will suffice for a joint return is adopted in the final regulations.

c. Suggested alternatives to signed taxpayer choice statement

The proposed regulations requested comments on how the burden of complying with the proposed taxpayer choice statement could be minimized. The comments received several suggested alternatives: (1) the IRS create a form similar to the "opt-out" forms used by some states that have an electronic filing requirement; (2) the IRS create a check-box on individual income tax returns in lieu of a separate writing obtained from the taxpayer; (3) the IRS accept IRS Form 8948 (*Preparer Explanation for Not Filing Electronically*) if the check-box for taxpayer choice to file in paper format is checked; or (4) the IRS allow a contemporaneous email (unsigned) from the taxpayer to the preparer, containing the recommended language.

The Treasury Department and the IRS have considered these suggestions in finalizing the revenue procedure on taxpayer choice statements and do not adopt them at this time. See Revenue Procedure 2011–25. Regarding the recommendations that the IRS create a new form or add a check-box to the individual income tax return forms affected by section 6011(e)(3), it is unclear how the provision of an additional form would be any more beneficial, easier to implement, or time or cost effective than the taxpayer choice statement provided because that statement is short and easy and inexpensive to reproduce. Regarding use of the Form 8948, because this form is completed by a specified tax return preparer and is not signed by the taxpayer, checking a box on Form 8948 is insufficient proof of a taxpayer's choice to file in paper format. Finally, an email message from the taxpayer is insufficient proof of a taxpayer's choice to file an individual income tax return in paper format. If sent as a scanned attachment to an email, however, a copy of a hand-signed statement in compliance with the final regulations and related guidance will suffice. See Rev. Proc. 2011–25. The Treasury Department and the IRS have concluded that the taxpayer's hand-written signature is necessary to establish that the taxpayer chose to file in paper format and should be required on all taxpayer choice statements. See §301.6011–7(a)(4)(ii).

4. *Undue Hardship Waivers*

The proposed regulations contain a provision which would provide an exclusion from the electronic filing requirement in cases of undue hardship. The Treasury Department and the IRS received several comments supporting this provision and the relief that it would provide. The final regulations adopt this exclusion, recognizing that there may be facts and circumstances in which the electronic filing requirement would create an undue hardship on the specified tax return preparer. Specified tax return preparers may request an undue hardship waiver from the IRS in the time and manner as set forth in the regulations and other published guidance.

One commentator recommended that taxpayers should be able to submit a hardship waiver request to the IRS. This recommendation was not adopted. The

electronic filing requirement of section 6011(e)(3) and the final regulations is imposed on a specified tax return preparer, not on a preparer's taxpayer-client. Since the burden of compliance rests with the specified tax return preparer, the preparer should be the person responsible for submission of undue hardship waiver requests.

As mentioned above, the Treasury Department and the IRS published Notice 2010–85 and received comments on the proposed undue hardship waiver procedures. All comments were considered and some adopted in the revenue procedure published concurrently with these final regulations. See Rev. Proc. 2011–25.

5. *Administrative Exemptions*

The proposed regulations contain a provision that would provide an exclusion from the electronic filing requirement pursuant to administrative exemptions established by the IRS in additional guidance. The Treasury Department and the IRS received several comments in support of this provision, suggesting several possible administrative exemptions. The final regulations adopt this provision. The Treasury Department and the IRS considered the comments and included many of the suggested administrative exemptions in Notice 2011–26, which provides administrative exemptions to the electronic filing requirement and is being issued contemporaneously with these final regulations.

Among the suggested administrative exemptions, Notice 2011–26 includes exemptions for (1) certain specified tax return preparers who are members of certain religious groups, certain foreign preparers without social security numbers, or specified tax return preparers who are currently ineligible for the IRS e-file program due to an IRS e-file sanction; (2) individual income tax returns that are not electronically filed due to technological difficulties, including a return that a specified tax return preparer was unable to e-file because the return was rejected, a return prepared by a tax return preparer or specified tax return preparer whose e-file software package does not support one or more forms or schedules that are part of the return, or a return prepared by a tax return preparer or specified tax return preparer who experiences a short-term

inability to electronically file the return or returns due to some other verifiable and documented technological problem; and (3) individual income tax returns currently not accepted electronically (for example, Forms 1040–NR and 990–T) or any documentation or attachments not accepted electronically, such as documentation for section 6707A disclosures or required appraisals to support charitable contributions. Some individual income tax returns, however, can be filed electronically and the attachments mailed to the IRS using a transmittal Form 8453 (*U.S. Individual Income Tax Transmittal for an IRS e-file Return*) or Form 8453–F (*U.S. Estate or Trust Income Tax Declaration and Signature for Electronic Filing*). The associated return must be filed electronically if prepared and filed by a specified tax return preparer and otherwise capable of being e-filed, and the attachments mailed to the IRS using a transmittal Form 8453. See the instructions to Form 8453 and the instructions to Form 8453–F.

6. *Transition Period*

To enhance compliance and to promote effective and efficient administration of the electronic filing requirement of section 6011(e)(3), the proposed regulations would provide a transition rule that would phase in the new electronic filing requirement for specified tax return preparers over a two-year period — 100 or more returns in 2011 and 11 or more returns starting in 2012. Solely for the 2011 calendar year, a tax return preparer would not be considered a specified tax return preparer if the tax return preparer reasonably expects, or the preparer's firm members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year.

Several commentators supported the concept of a transition rule. For various reasons, primarily the issuance of these final regulations and other guidance at the beginning of the 2011 filing season, some commentators urged that the effective date of the electronic filing requirement be delayed until January 2012. Due to similar concerns, another commentator recommended that the transition period be expanded by lengthening the period to three years and increasing the filing threshold for calendar year 2011 from 100

to 200 individual income tax returns. This commentator pointed out that some states used 200 returns for their state return electronic filing requirement at least for the initial filing season. Either approach would allow tax return preparers more time to become familiar with these final regulations and to give those subject to the new rules more time to make the necessary preparations and arrangements to comply with the rules.

The final regulations adopt the transition period proposed in the proposed regulations — 100 or more individual income tax returns in 2011, and 11 or more individual income tax returns in 2012 and thereafter. This approach maintains the congressionally-mandated effective date applicable to all individual income tax returns filed after December 31, 2010, while providing both tax return preparers and the IRS with the ability to effectively and efficiently transition to the mandatory electronic filing of individual income tax returns. In addition, tax return preparers who have not already entered the IRS e-file system and who have always prepared their clients' individual income tax returns in paper format are unlikely to be adversely affected by the difference between 100 and 200 returns. Since the final regulations (like the proposed regulations) do not count the paper individual income tax returns filed by taxpayers who sign a taxpayer choice statement to file in paper format, these tax return preparers may not meet the definition of "specified tax return preparer" if the tax return preparers either reasonably expect their clients to continue to file their individual income tax returns in paper format or obtain this statement from their clients.

It is also noted that throughout 2010 the IRS performed extensive educational outreach across the country, informing the tax return preparer community of the anticipated 100-return transition rule for 2011. This educational outreach included, among other things, a discussion of the administrative exemptions that the IRS anticipated would be included in final guidance.

7. *Electronic Filing Burden*

Some commentators stated that the electronic filing requirement is burdensome, including imposing additional

costs on tax return preparers and their clients, and questioned the accuracy of the hour burden estimates set forth in the Paperwork Reduction Act section of the proposed regulations. The proposed regulations, however, did not provide an estimate of the burden related to the electronic filing of individual income tax returns, but rather the burden, measured in hours, to obtain the recommended statements from taxpayer-clients to document their choice to file individual income tax returns in paper format and submit the returns to the IRS themselves. See §301.6011-7(a)(4)(ii). Any burden associated with the congressionally-mandated electronic filing requirement of section 6011(e)(3) was not at issue in or established by the proposed regulations, but is a direct result of that statutory requirement. One commentator remarked that there should not be an electronic filing mandate if the government does not reimburse the tax return preparer for any additional cost of electronic filing. The Congress, however, established the requirement, which does not include a reimbursement requirement.

In its comments, the Small Business Administration Office of Advocacy (SBA) stated that the proposed regulations, if finalized, would impact small business tax return preparers by "increasing the scope of specified tax return preparers." Specifically, the SBA stated that, because the proposed regulations would require specified tax return preparers to electronically file individual income tax returns and would define a specified tax return preparer as a tax return preparer who reasonably expects to file more than 10 individual income tax returns in a calendar year, the proposed regulations would increase the scope of specified tax return preparers. For the same reasons, the SBA stated that the proposed regulations contain a significant collection of information and have the potential to have a significant economic impact on a substantial number of small entities if the proposed regulations are adopted as final regulations. The SBA stated that the certification in the proposed regulations that a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. chapter 6 (RFA), was not required was not supported by a factual basis. The SBA recommended that the IRS publish for public comment either a supplemental

RFA assessment or an Initial Regulatory Flexibility Analysis.

The Treasury Department and the IRS disagree with the SBA's conclusions and do not adopt its recommendation. As discussed in the preamble of the proposed regulations, the 10-return threshold for determining whether a tax return preparer is a specified tax return preparer is a statutory condition under section 6011(e)(3). The Congress by statute, and not the proposed regulations, established the electronic filing requirement, including the 10-return threshold for specified tax return preparers. As a result, a Regulatory Flexibility Analysis under the RFA is not required regarding the electronic filing requirement and its burden. The Treasury Department and the IRS have certified in the proposed regulations (and again in these final regulations) that the only collection of information contained in the regulations (the taxpayer choice statement) would not have a significant impact on a substantial number of small entities.

In its comments the SBA stated:

Prior to passage of the Worker, Homeownership, and Business Assistance Act of 2009 (the Act), the IRS was prohibited from requiring filers of individual income tax returns to file electronically unless the person was required to file at least 250 returns during the calendar year. The Act authorized the IRS to issue this NPRM to increase the scope of specified tax return preparers.

Page 2, SBA Office of Advocacy Letter of December 20, 2010.

Prior to the Act, the IRS was prohibited from requiring that income tax returns for individuals, estates, and trusts be other than on paper forms regardless of the number of returns filed, as specifically provided by the last sentence of section 6011(e)(1). The referenced 250-return rule, contained in section 6011(e)(2), is only applicable to non-individual taxpayer filers, for example, corporations and partnerships. Following passage of the Act, there are now two separate rules that can affect individual taxpayers. The first rule is still provided by section 6011(e)(1), which prohibits the IRS from requiring income tax returns of individuals, estates, and trusts be on anything other than paper forms if the individual taxpayer prepares and files the taxpayer's income tax

return. The second rule is the newly enacted rule, contained in section 6011(e)(3), that applies when an individual taxpayer uses the services of a tax return preparer to prepare the taxpayer's income tax return. The 250-return rule similarly is not applicable to either of these rules.

In addition, the requirements and restrictions contained in section 6011(e)(2) only apply to "regulations [prescribed] under paragraph [6011(e)](1)," while the proposed and final regulations involved here are being prescribed pursuant to section 6011(e)(3) and the specific requirement detailed in section 6011(e)(3)(A) ("The Secretary shall require tha[t] any individual income tax return prepared by a tax return preparer be filed on magnetic media if..."). There is no "increase" in the scope of specified tax return preparers provided by the regulations. Prior to the Act and section 6011(e)(3), specified tax return preparers did not exist. The taxpayer choice statement provision, together with the provision for administrative exemptions, may work to reduce the number of specified tax return preparers because individual income tax returns affected by these provisions are not counted in determining whether a tax return preparer files more than 10 (100 or more in 2011) individual income tax returns in a calendar year. Further, these provisions, as well as the undue hardship waiver provision, will benefit tax return preparers in their efforts to comply with the electronic filing requirement placed upon them by section 6011(e)(3). Furthermore, even if a tax return preparer is a specified tax return preparer, under both the proposed and final regulations a preparer would not have to electronically file an individual income tax return that a taxpayer chooses to have prepared in paper format and which the taxpayer will file with the IRS, providing a further compliance benefit to all tax return preparers subject to section 6011(e)(3).

The collection of information analysis in the proposed regulations was limited to the sole collection of information contained in the proposed regulations; that is, the taxpayer choice statements. The proposed regulations, in the preamble, stated:

This information [taxpayer choice statement] can be used by tax return preparers and specified tax return preparers, if necessary, to demonstrate to the IRS that the related individual in-

come tax returns filed in paper format were not required to be filed electronically pursuant to section 6011(e)(3) and §301.6011-6. The collection of information is voluntary to obtain a benefit.

As discussed in this preamble, the electronic filing requirement applicable to specified tax return preparers is congressionally mandated and flows directly from the statute, that is, section 6011(e)(3); therefore, a Regulatory Flexibility Analysis under the RFA is not required. The Treasury Department and the IRS have adequately and appropriately certified in the proposed regulations that the taxpayer choice statement would not have a significant impact on a substantial number of small entities. This collection of information has been reviewed and approved by OMB.

As previously mentioned, the certification in the proposed regulations was sufficient. This certification certified that the collection of information contained in the proposed regulations, the collection related to the taxpayer choice statement, would not have a significant economic impact on a substantial number of small entities and referred to the Paperwork Reduction Act section in the preamble to the proposed regulations for further information as to why economic impact on affected small entities was not significant. That section identified the small entities likely affected, estimated the number of affected firms, and discussed the time and nature of preparation and recordkeeping. Although the certification in the proposed regulations did not reduce the paperwork burden items to monetary costs, the proposed regulations solicited "Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of service to provide information." No such estimates were received during the public comment period.

Section 605(b) of the RFA requires that the certification appear in either the proposed or final rule. Although not required, these final regulations include another certification that a Regulatory Flexibility Analysis under the RFA is not required. See the Special Analyses section.

8. *Filing Perfection Period*

One commentator recommended a 10-day perfection period for individual

income tax returns. Because of issues that could arise with technology, the IRS e-file systems allow perfection of the e-file submission if the initial submission was made on or before the return due date, the submitter received a "rejection" of the return from the IRS, and the submitter resolved the issue to successfully e-file the return to the IRS within a prescribed period. The current perfection period for individual returns is five days. The Treasury Department and the IRS do not adopt this recommendation in these final regulations because this type of provision is more appropriate for inclusion in administrative procedures.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an Agency issues a rulemaking proposal, the Regulatory Flexibility Act, 5 U.S.C. chapter 6 (RFA), requires the Agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The collection of information in these final regulations is in §301.6011-7(a)(4)(ii) (taxpayer choice statement). This information will be used by tax return preparers and specified tax return preparers to demonstrate to the IRS that the related individual income tax returns filed in paper format were not required to be filed electronically pursuant to section 6011(e)(3) and these final regulations, thus reducing the burden on tax return preparers and specified tax return preparers. This collection of information is voluntary to obtain a benefit, that is, conclusive proof of a taxpayer's choice to file an individual income tax return in paper format, which will be used by tax return preparers and specified tax return

preparers to demonstrate to the IRS that the individual income tax return filed in paper format was not required to be filed electronically.

The final regulations affect self-employed specified tax return preparers and small businesses that employ specified tax return preparers who prepare individual income tax returns in exchange for compensation. Section 601(3) of the RFA defines a small business as having the same meaning as “small business concern” under section 3 of the Small Business Act, 15 U.S.C. 632. The IRS estimates that 135,000 firms in 2011 and 312,000 in 2012 qualifying as small businesses will obtain taxpayer choice statements from taxpayers who choose to have their individual income tax returns prepared in paper format and will submit the paper returns to the IRS. (These estimates are based on Tax Year 2007 figures, including firms that filed all of their individual income tax returns on paper and those firms that electronically filed individual income tax returns for that tax year.) Therefore, the Treasury Department and the IRS have determined that this Treasury decision will have an impact on a substantial number of small businesses.

The IRS has also determined, however, that the impact on entities affected by these final regulations will not be significant. The recordkeeping burden associated with obtaining and keeping documentation of a taxpayer choice to file in paper format is minimal. It is estimated that five minutes of preparation time is needed for a preparer to explain the purpose of the information and obtain the taxpayer choice statement from the taxpayer in the manner prescribed by the IRS, and six minutes for maintaining a copy in the preparer’s records. A tax return preparer generally will not be submitting this documentation to the IRS. Based on the estimated numbers of firms (135,000 in 2011 and 312,000 in 2012) and estimates for the number of individual income tax returns that taxpayers chose to file (6,669,900 in 2011 and 9,217,800 in 2012), the estimated hours per firm is 9.06 in 2011 and 5.42 in 2012; with an average number of 1.2 preparers per firm, the estimated hours per preparer is 7.55 in 2011 and 4.51 in 2012.

Additionally, the Treasury Department and the IRS note that section 6011(e)(3) and these regulations only prescribe the

method of filing individual income tax returns that are already required to be filed. Further, these regulations are implementing the electronic filing requirement imposed by statute on specified tax return preparers, as defined in section 6011(e)(3)(B). The taxpayer choice statement reduces any burden associated with the electronic filing requirement because paper individual income tax returns for which the tax return preparer obtains a taxpayer choice statement from the taxpayer are not counted in determining whether a tax return preparer files more than 10 (100 or more in 2011) individual income tax returns in a calendar year. There are no capital or start-up costs, such as the purchase of tax software, associated with the taxpayer choice statement; tax return preparers do not have to buy tax software to obtain a signed statement from their clients. Finally, the IRS has provided procedures for specified tax return preparers to request a waiver of the electronic filing requirement in cases of undue hardship. Therefore, specified tax return preparers who receive an approved hardship waiver would not have to obtain taxpayer choice statements for any individual income tax returns that are covered under the waiver.

Accordingly, the Treasury Department and the IRS hereby certify that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these final regulations is Keith L. Brau, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.6011–6 also issued under 26 U.S.C. 6011(a). * * *

Section 1.6011–7 also issued under 26 U.S.C. 6011(e). * * *

Par. 2. Section 1.6011–6 is added and reserved to read as follows:

§1.6011–6. [Reserved].

Par. 3. Section 1.6011–7 is added to read as follows:

§1.6011–7 Specified tax return preparers required to file individual income tax returns using magnetic media.

Individual income tax returns that are required to be filed on magnetic media by tax return preparers under section 6011(e)(3) and §301.6011–7 of this chapter must be filed in accordance with Internal Revenue Service regulations, revenue procedures, revenue rulings, publications, forms or instructions, including those posted electronically.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. 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 301.6011–6 also issued under 26 U.S.C. 6011(a). * * *

Section 301.6011–7 also issued under 26 U.S.C. 6011(e). * * *

Par. 5. Section 301.6011–6 is added and reserved to read as follows:

§301.6011–6 Statement of series and series organizations. [Reserved].

Par. 6. Section 301.6011–7 is added to read as follows:

§301.6011–7 Specified tax return preparers required to file individual income tax returns using magnetic media.

(a) *Definitions.*

(1) *Magnetic media.* For purposes of this section, the term *magnetic media* has the same meaning as in §301.6011–2(a)(1).

(2) *Individual income tax return.* The term *individual income tax return* means

any return of tax imposed by subtitle A on individuals, estates, and trusts.

(3) *Specified tax return preparer.* The term *specified tax return preparer* means any person who is a tax return preparer, as defined in section 7701(a)(36) and §301.7701-15, unless that person reasonably expects to file 10 or fewer individual income tax returns in a calendar year. If a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer unless the person's firm members in the aggregate reasonably expect to file 10 or fewer individual income tax returns in a calendar year. Solely for the 2011 calendar year, a person will not be considered a specified tax return preparer if that person reasonably expects, or if the person is a member of a firm, the firm's members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year. Solely for purposes of this section, a person is considered a member of a firm if the person is an employee, agent, member, partner, shareholder, or other equity holder of the firm.

(4) *File or Filed.* (i) For purposes of section 6011(e)(3) and these regulations only, an individual income tax return is considered to be "filed" by a tax return preparer or a specified tax return preparer if the preparer submits the individual income tax return to the IRS on the taxpayer's behalf, either electronically (by e-file or other magnetic media) or in non-electronic (paper) form. Submission of an individual income tax return by a tax return preparer or a specified tax return preparer in non-electronic form includes the transmission, sending, mailing or otherwise delivering of the paper individual income tax return to the IRS by the preparer, any member, employee, or agent of the preparer, or any member, employee, or agent of the preparer's firm.

(ii) An individual income tax return will not be considered to be filed, as defined in paragraph (a)(4)(i) of this section, by a tax return preparer or specified tax return preparer if the tax return preparer or specified tax return preparer who prepared the return obtains, on or prior to the date the individual income tax return is filed, a hand-signed and dated statement from the taxpayer (by either spouse if a joint return) that states the taxpayer chooses to file the individual income tax return in paper for-

mat, and that the taxpayer, and not the preparer, will submit the paper individual income tax return to the IRS. The IRS may provide guidance through forms, instructions or other appropriate guidance regarding how tax return preparers and specified tax return preparers can document a taxpayer's choice to file an individual income tax return in paper format.

(iii) The rules contained in this section do not alter or affect a taxpayer's obligation to file returns under any other provision of law. The definition of *file* or *filed* by a tax return preparer or specified tax return preparer contained in paragraph (a)(4)(i) of this section applies only for the purposes of section 6011(e)(3) and these regulations and does not apply for any other purpose under any other provision of law.

(b) *Magnetic media filing requirement.* Except as provided in paragraphs (a)(4)(ii) and (c) of this section, any individual income tax return prepared by a specified tax return preparer in a calendar year must be filed on magnetic media if the return is filed by the specified tax return preparer.

(c) *Exclusions.* The following exclusions apply to the magnetic media filing requirement in this section:

(1) *Undue hardship waiver.* The IRS may grant a waiver of the requirement of this section in cases of undue hardship. An undue hardship waiver may be granted upon application by a specified tax return preparer consistent with instructions provided in published guidance and as prescribed in relevant forms and instructions. A determination of undue hardship will be based upon all facts and circumstances. The undue hardship waiver provided to a specified tax return preparer may apply to a series or class of individual income tax returns or for a specified period of time, subject to the terms and conditions regarding the method of filing prescribed in such waiver.

(2) *Administrative exemptions.* The IRS may provide administrative exemptions from the requirement of this section for certain classes of specified tax return preparers, or regarding certain types of individual income tax returns, as the IRS determines necessary to promote effective and efficient tax administration. The IRS may provide administrative exemptions and any criteria or procedures necessary to claim an administrative exemption

through forms, instructions, or other appropriate guidance.

(d) *Reasonably expect to file*—(1) *In general.* The determination of whether a tax return preparer reasonably expects, or if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect, to file 10 or fewer individual income tax returns (or, in the case of the 2011 calendar year, fewer than 100 individual income tax returns) is made by adding together all of the individual income tax returns the tax return preparer and, if the preparer is a member of a firm, the firm's members reasonably expect to prepare and file in the calendar year. In making this determination, individual income tax returns that the tax return preparer reasonably expects will not be subject to the magnetic media filing requirement under paragraph (a)(4)(ii) of this section or are excluded from the requirement under (c)(2) of this section are not to be counted. Individual income tax returns excluded from the magnetic media filing requirement under paragraph (c)(1) of this section are to be counted for purposes of making this determination.

(2) *Time for making determination of reasonable expectations.* The determination regarding reasonable expectations is made separately for each calendar year in order to ascertain whether the magnetic media filing requirement applies to a tax return preparer for that year. For each calendar year, the determination of whether a tax return preparer and the preparer's firm reasonably expect to file 10 or fewer individual income tax returns (or, in the case of the 2011 calendar year, fewer than 100 individual income tax returns) is made based on all relevant, objective, and demonstrable facts and circumstances prior to the time the tax return preparer and the preparer's firm first file an individual income tax return during the calendar year.

(e) *Examples.* The following examples illustrate the rules of paragraphs (a) through (d) of this section.

Example 1. Tax Return Preparer A is an accountant who recently graduated from college with an accounting degree and has opened his own practice. A has not prepared individual income tax returns for compensation in the past and does not plan to focus his practice on individual income tax return preparation. A intends instead to focus his practice on providing specialized accounting services to certain health care service providers. A has no plans to, and does not, employ or engage any other tax return pre-

parers. A estimates that he may be asked by some clients to prepare and file their individual income tax returns for compensation, but A expects that the number of people who do ask him to provide this service will be no more than seven in 2012. In fact, A actually prepares and files six paper Forms 1040 (*U.S. Individual Income Tax Return*) in 2012. Due to a growing client base, and based upon his experience in 2012, A expects that the number of individual income tax returns he will prepare and file in 2013 will at least double, estimating he will prepare and file 12 Form 1040 returns in 2013. A does not qualify as a specified tax return preparer for 2012 because A reasonably expects to file 10 or fewer returns (seven) in 2012. Consequently, A is not required to electronically file the individual income tax returns he prepares and files in 2012. A's expectation is reasonable based on his business projections, individual income tax return filing history, and staffing decisions. A is a specified tax return preparer in 2013, however, because based on those same factors A reasonably expects to file more than 10 individual income tax returns (12) during that calendar year. A, therefore, must electronically file all individual income tax returns that A prepares and files in 2013 that are not otherwise excluded from the electronic filing requirement.

Example 2. Same facts as in *Example 1*, except three of Tax Return Preparer A's clients specifically chose to have A prepare their individual income tax returns in paper format in 2012 with the clients mailing their respective returns to the IRS. A expects that these three clients will similarly choose to have him prepare their returns in paper format in 2013, with the clients being responsible for mailing their returns to the IRS. A is not required to electronically file these three returns in 2013 because the taxpayers chose to file their returns in paper format. A obtained a hand-signed and dated statement from each of those taxpayers, indicating that they chose to file their returns in paper format. These three individual income tax returns are not counted in determining how many individual income tax returns A reasonably expects

to file in 2013. Because the total number of individual income tax returns A reasonably expects to file in 2013 (nine) does not exceed 10, A is not a specified tax return preparer for calendar year 2013, and A is not required to electronically file any individual income tax return that he prepares and files in 2013.

Example 3. Tax Return Preparer B is a solo general practice attorney in a small county. Her practice includes the preparation of wills and assisting executors in administering estates. As part of her practice, B infrequently prepares and files Forms 1041 (*U.S. Income Tax Return for Estates and Trusts*) for executors. In the past three years, she prepared and filed an average of five Forms 1041 each year and never exceeded more than seven Forms 1041 in any year. Based on B's prior experience and her estimate for 2012, made prior to the time she first files an individual income tax return in 2012, she reasonably expects to prepare and file no more than five Forms 1041 in 2012. Due to the unforeseen deaths of several of her clients in late 2011, B actually prepares and files 12 Forms 1041 in 2012. B does not find out about these deaths until after she has already filed the first Form 1041 in 2012 for another client. B is not required to electronically file these returns in 2012. She does not qualify as a specified tax return preparer for calendar year 2012 because prior to the time she filed the first Form 1041 in 2012, she reasonably expected to file 10 or fewer individual income tax returns in 2012.

Example 4. Same facts as *Example 3*, except, in addition to the five Forms 1041 that she expects to prepare and file in 2012, Tax Return Preparer B also expects to prepare and file 10 paper Forms 1040 (*U.S. Individual Income Tax Return*) in 2012, based upon the requests that she has received from some of her clients. Because the total number of individual income tax returns B reasonably expects to file in 2012 (fifteen) exceeds 10, B is a specified tax return preparer for calendar year 2012, and B must electronically file all individual income tax returns that B prepares and files in 2012 that are not otherwise excluded from the electronic filing requirement.

Example 5. Firm X consists of two tax return preparers, Tax Return Preparer C who owns Firm X, and Tax Return Preparer D who is employed by C in Firm X. Based upon the firm's experience over the past three years, C and D reasonably expect to file nine and ten individual income tax returns for compensation, respectively, in 2012. Both C and D must electronically file the individual income tax returns that they prepare in 2012, unless the returns are otherwise excluded from the electronic filing requirement, because they are members of the same firm and the aggregated total of individual income tax returns that they reasonably expect to file in 2012 (nineteen), exceeds 10 individual income tax returns.

(f) *Additional guidance.* The IRS may implement the requirements of this section through additional guidance, including by revenue procedures, notices, publications, forms and instructions, including those issued electronically.

(g) *Effective /applicability date.* This section is effective on March 30, 2011, and applicable to individual income tax returns filed after December 31, 2010.

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

Approved March 25, 2011.

Michael Mundaca,
*Assistant Secretary of
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on March 28, 2011, 4:15 p.m., and published in the issue of the Federal Register for March 30, 2011, 76 F.R. 17521)

Part III. Administrative, Procedural, and Miscellaneous

Extension of Relief and Procedures Under Notice 2010–30 for Spouses of U.S. Servicemembers who are Working in or Claiming Residence or Domicile in a U.S. Territory Under the Military Spouses Residency Relief Act

Notice 2011–16

On April 15, 2010, the Treasury Department and the Internal Revenue Service published Notice 2010–30, 2010–18 I.R.B. 650, which provides relief and procedures for certain taxpayers who are spouses (civilian spouses) of active duty members of the uniformed services (servicemembers). In particular, the procedures in Notice 2010–30 were made available for the taxable year including November 11, 2009 (generally, this will be the calendar year 2009, and is referred to hereinafter as “2009”), to civilian spouses who (A) accompany their servicemember spouses to a military duty station in American Samoa, Guam, the Northern Mariana Islands (NMI), Puerto Rico, or the U.S. Virgin Islands (USVI) (each a “U.S. territory”) and claim residence or domicile (tax residence) in one of the 50 States or the District of Columbia under the Military Spouses Residency Relief Act (MSRRA) pursuant to the procedures in Notice 2010–30 or (B) accompany their servicemember spouses to a military duty station in one of the 50 States or the District of Columbia and claim tax residence in a U.S. territory under MSRRA.

This notice provides that civilian spouses described in the prior paragraph claiming MSRRA relief for federal income tax purposes for the first taxable year beginning after November 11, 2009 (generally, this will be calendar year 2010, and is referred to hereinafter as “2010”) should follow the applicable procedures described in Notice 2010–30.

The extension of time to pay federal income taxes described in Part III(A)(1)(b) of Notice 2010–30 for 2009 is available to eligible civilian spouses described in Part III(A)(1)(b) of Notice 2010–30 claim-

ing MSRRA relief with respect to individual federal income tax returns filed for 2010. Such taxpayers should follow the procedures in Part III(A)(1)(b) of Notice 2010–30 to obtain an extension of time through October 17, 2011 to pay federal income taxes for 2010.

As provided in Notice 2010–30, the IRS has determined pursuant to section 6654(e)(3)(A) of the Internal Revenue Code (Code) that with respect to civilian spouses eligible for the extension of time to pay federal income taxes described in Part III(A)(1)(b) of Notice 2010–30, applying the addition to tax under section 6654(a) in the case of an underpayment of estimated tax by such civilian spouses for 2010 is against equity and good conscience due to unusual circumstances.

Civilian spouses who obtain the extension to pay federal income taxes for 2010 provided by this notice are required to pay interest on the amount of tax from the original payment due date until the date the tax is paid. Pursuant to section 6601, interest is calculated from the prescribed payment due date determined under section 6151 without regard to any extension to pay federal income tax, including the extension to pay tax provided by this notice.

For the reasons discussed in Part III(A)(2) of Notice 2010–30, the extension to pay federal income taxes described in Part III(A)(1)(b) of Notice 2010–30 is not available to civilian spouses claiming tax residence in a State or the District of Columbia under MSRRA and filing individual federal income tax returns for 2010, who are: (A) federal employees in American Samoa, Guam, or the USVI; and (B) individuals working in Guam or the NMI to whom section 935 applies. These civilian spouses should file their 2010 federal individual income tax returns and pay any taxes due according to the procedures described in Part III(A)(2) of Notice 2010–30.

Civilian spouses who accompany their servicemember spouses to a military duty station in one of the 50 States or the District of Columbia and who claim tax residence in a U.S. territory under MSRRA should follow the procedures in Part III(B) of Notice 2010–30 with respect to their 2010 income tax returns.

DRAFTING INFORMATION

The principal author of this notice is Rosy L. Lor of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Rosy L. Lor at (202) 622–3880 (not a toll-free call).

Administrative Exemptions to the Specified Tax Return Preparer Electronic Filing Requirement Under Internal Revenue Code § 6011(e)(3) and Regulations Under § 6011(e)(3)

Notice 2011–26

PURPOSE

This notice applies to tax return preparers who are required by law to electronically file certain income tax returns for individuals, estates, and trusts. This notice provides administrative exemptions to the electronic filing requirement under section 6011(e)(3) of the Internal Revenue Code and corresponding regulations.

BACKGROUND

Contemporaneously with the publication of this notice, final regulations have been published in the Federal Register as **T.D. 9518** (76 FR 17521) on **March 30, 2011** implementing the requirement under section 6011(e)(3) that specified tax return preparers file individual income tax returns electronically if they prepare and file the returns for taxpayers. Under section 6011(e)(3)(B) and as further defined in § 301.6011–7(a)(3), a specified tax return preparer means, with respect to any calendar year, any tax return preparer within the meaning of section 7701(a)(36) and § 301.7701–15 who prepares any individual income tax return unless such tax return preparer reasonably expects to file 10 or fewer individual income tax returns in the calendar year, and if a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer unless the person’s firm members in the aggregate reasonably expect to file 10

or fewer individual income tax returns in a calendar year. Solely for the 2011 calendar year, a tax return preparer will not be considered a specified tax return preparer if the preparer reasonably expects, or if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year.

Section 6011(e)(3)(C) and § 301.6011-7(a)(2) define an individual income tax return as any return of tax imposed by subtitle A on individuals, estates, and trusts. This includes the Form 1040 series of income tax returns for individuals, the Form 1041 series of income tax returns for estates and trusts, and Form 990-T (*Exempt Organization Business Income Tax Return*) when the exempt organization is a trust subject to tax on unrelated business taxable income under section 511(b).

Under section 6011(e)(3)(A) and § 301.6011-7(b), any individual income tax return prepared by a specified tax return preparer in a calendar year must be filed electronically if the return is filed by the specified tax return preparer. Section 301.6011-7(c)(1) authorizes the IRS to grant to a specified tax return preparer a waiver of this requirement in the case of undue hardship. Revenue Procedure 2011-25, published in the Internal Revenue Bulletin (2011-17 I.R.B. 725) on April 25, 2011, provides additional guidance regarding undue hardship waiver requests. Announcement 2010-96, published in the Internal Revenue Bulletin (2010-52 I.R.B. 936) on December 27, 2010, provided further guidance on electronic filing hardship waiver request procedures for calendar year 2011.

Section 301.6011-7(c)(2) provides for another category of exclusion from the electronic filing requirement, administrative exemptions. Under § 301.6011-7(c)(2), the IRS may provide administrative exemptions for certain classes of specified tax return preparers or types of individual income tax returns, as the IRS determines necessary to promote the effective and efficient administration of section 6011(e)(3) of the Internal Revenue Code and § 301.6011-7, and the IRS may provide the criteria and procedures, if any are necessary, for administrative exemptions through forms, instructions,

or other appropriate guidance. This notice sets forth the administrative exemptions to the electronic filing requirement contained in those sections, and these administrative exemptions are to remain in effect until modified or superseded.

DISCUSSION

Scope of Administrative Exemptions. The administrative exemptions set forth in this notice for certain classes of specified tax return preparers apply to all tax return preparers who fall within one of those classes. These exemptions are intended to be applicable retroactively as of January 1, 2011, to tax return preparers who reasonably expect to file, or if a member of a firm whose firm's members in the aggregate reasonably expect to file, 100 or more individual income tax returns in calendar year 2011. They will be applicable starting in 2012 to tax return preparers who reasonably expect to file, or if a member of a firm whose firm's members in the aggregate reasonably expect to file, 11 or more individual income tax returns in 2012 and subsequent calendar years. An exemption, however, is not needed for any tax return preparer who is not required to file individual income tax returns electronically, *i.e.*, tax return preparers who reasonably expect to file, or if a member of a firm whose firm's members in the aggregate reasonably expect to file, fewer than 100 individual income tax returns during calendar year 2011 (10 or fewer in calendar year 2012 and thereafter).

The administrative exemptions set forth in this notice for certain types of individual income tax returns are applicable to tax return preparers, specified tax return preparers, or both, depending on the circumstances discussed in this notice. These administrative exemptions are intended to be applicable retroactively as of January 1, 2011. Tax return preparers are affected by the administrative exemptions because a tax return preparer's classification as a specified tax return preparer is based upon the number of non-exempt individual income tax returns the tax return preparer reasonably expects to file in a given calendar year, and exempt returns do not count towards the more than 10 (100 or more in 2011) individual income tax return

filing threshold. Specified tax return preparers are affected by administrative exemptions because these preparers are not required to electronically file any individual income tax return that qualifies for an administrative exemption.

Administrative Exemptions.

A. Exempt Preparers. The following categories of tax return preparers and specified tax return preparers are exempt from the electronic filing requirement under section 6011(e)(3) and the corresponding regulations:

1. *Preparer Members of Certain Religious Groups.* A tax return preparer who is a member of a recognized religious group that is conscientiously opposed to its members using electronic technology, including for the filing of income tax returns electronically, and that has existed continuously since December 31, 1950.

2. *Foreign Preparers Without Social Security Numbers.* A specified tax return preparer who is a foreign person without a social security number and is therefore ineligible to file electronically because the IRS e-file program currently does not accept foreign tax return preparers without social security numbers who live and work abroad. To qualify for this exemption, the specified tax return preparer (1) must not be a member of a firm that is eligible to e-file, and (2) must have applied for a PTIN and either submitted Form 8946, *PTIN Supplemental Application For Foreign Persons Without a Social Security Number* or qualify for the relief provided by Section 5 of Revenue Procedure 2010-41, 2010-48 I.R.B. 781.

3. *Certain Preparers Ineligible for IRS e-file.* A tax return preparer who is currently ineligible for the IRS e-file program due to an IRS e-file sanction. To qualify for this exemption, the tax return preparer must have received a letter from the IRS enforcing the sanction and the sanction must be in effect for some or all of the calendar year in which the individual income tax return or returns are being filed. This exemption ends on the date the sanction period ends or the date the IRS accepts the tax return preparer into the IRS e-file program, whichever date occurs first. If, however, the tax return preparer has a pending application for the IRS e-file program filed with the IRS at the time the sanction period

ends, the exemption will continue until the date the IRS renders a decision on the tax return preparer's application.

B. Exempt Individual Income Tax Returns Due to Preparer's Technological Difficulties. The following individual income tax returns are exempt from the electronic filing requirement under section 6011(e)(3) and the corresponding regulations, due to technological difficulties experienced by a tax return preparer or specified tax return preparer, as applicable, who meets the identified criteria for an exemption:

1. *Rejected Returns.* A return that a specified tax return preparer attempted to e-file but was unable to e-file because the return was rejected and the specified tax return preparer attempted but could not resolve the reject condition or code.

2. *Forms or Schedules Not Supported by Preparer's Software Package.* A return prepared by a tax return preparer or specified tax return preparer whose e-file software package does not support one or more forms or schedules that are part of the return.

3. *Other Technological Difficulties.* A return or returns prepared by a tax return preparer or specified tax return preparer who experiences a short-term inability to electronically file the return or returns due to some other verifiable and documented technological problem.

C. Exempt Individual Income Tax Returns Due to IRS e-file Limitations. For all tax return preparers and specified tax return preparers, the following individual income tax returns and attachments to returns are exempt from the electronic filing requirement under section 6011(e)(3) and the corresponding regulations, due to IRS barriers or other systemic limitations that currently prevent the returns and attachments from being filed electronically:

1. *Returns Currently Not Accepted Electronically.* Any individual income tax return that is not currently accepted electronically by IRS e-file or that the IRS has instructed taxpayers not to file electronically. This includes Form 1040-NR (*U.S. Nonresident Alien Income Tax Return*), Form 1041-QFT (*U.S. Income Tax Return for Qualified Funeral Trusts*), Form 990-T (*Exempt Organization Business Income Tax Return*), and all amended individual income tax returns, such as Form 1040X (*Amended U.S. Individual Income*

Tax Return). This also includes a fiscal year return for Form 1040 (*U.S. Individual Income Tax Return*) and a fiscal year return for Form 1041 (*U.S. Income Tax Return for Estates & Trusts*) for certain periods (fiscal year Form 1041 returns ending during any month after June 30 of the current processing year); Form 1041 claiming a refund amount equal to or greater than \$10,000,000; Form 1041 with a dollar amount over \$99,999,999,999; and other Forms 1041 not accepted by IRS e-file for any other limitation listed in IRS Publication 1437 (*Procedures for the Form 1041 e-file Program U.S. Income Tax Returns for Estates and Trusts*). See IRS Publication 1346 (*Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns*) for forms in the Form 1040-series that the IRS currently accepts electronically. For information on IRS.Gov, see www.irs.gov/efile/.

2. *Required Documentation or Attachments Not Accepted Electronically.* Any required documentation or attachments that the IRS does not yet provide the capability to file electronically such as documentation for section 6707A disclosures or required appraisals to support charitable contributions are exempt. Some returns can be filed electronically and the attachments mailed to the IRS using a transmittal Form 8453 (*U.S. Individual Income Tax Transmittal for an IRS e-file Return*) or Form 8453-F (*U.S. Estate or Trust Income Tax Declaration and Signature for Electronic Filing*). The associated return must be filed electronically if prepared and filed by a specified tax return preparer and otherwise capable of being e-filed, and the attachments mailed to the IRS using a transmittal Form 8453. See the instructions to Form 8453 and instructions to Form 8453-F.

Exemptions are Automatic. A tax return preparer or specified tax return preparer who qualifies for an exemption described in this notice does not have to request an exemption from the IRS or otherwise obtain the IRS' approval. These exemptions are automatic for those who meet the criteria provided in this notice. Although there is no need to apply for an administrative exemption or to maintain any specific information, the burden is on the tax return preparer or specified tax return preparer to show entitlement to an administrative exemption, and the preparer will

be required to demonstrate the applicability of an administrative exemption or exemptions upon request by the IRS. Note that undue hardship waiver requests are unnecessary for purposes of claiming an administrative exemption and should not be submitted by or for an exempt specified tax return preparer, or for an exempt individual income tax return.

The IRS has created Form 8948, *Preparer Explanation for Not Filing Electronically*, for specified tax return preparers to explain why an individual income tax return that is able to be filed electronically was prepared and filed in paper format. Among the reasons listed, Form 8948 includes the exemptions listed in paragraphs A. and B. of this notice. For further information, see the instructions to Form 8948, which, among other things, provide that Form 8948 is to be attached to the paper copy of the tax return that a specified tax return preparer prepares and furnishes to the taxpayer. Further note that returns currently not acceptable by IRS electronically as specified in paragraph C.1. of this notice do not require the use of Form 8948.

Further Information. Further information, including Frequently Asked Questions, on the electronic filing requirement, administrative exemptions, and undue hardship waiver requests, is posted on www.irs.gov.

EFFECTIVE DATE

The administrative exemptions set forth in the notice are effective for and apply to individual income tax returns filed after December 31, 2010.

DRAFTING INFORMATION

The principal author of this notice is Keith Brau of the Office of Associate Chief Counsel (Procedure & Administration). For specific questions regarding the electronic filing requirement, undue hardship waiver requests, and administrative exemptions, call the IRS at 1-866-255-0654 (a toll-free number); callers who are outside of the 50 U.S. States and/or U.S. Territories should use the International phone number: 1-512-416-7750 (not a toll-free number). For further information regarding this notice, contact Keith Brau at (202) 622-4940 (not a toll-free number).

The Mailing of Individual Income Tax Returns By Specified Tax Return Preparers in Calendar Year 2011

Notice 2011-27

This notice provides transitional guidance on the implementation of the new electronic filing requirements applicable to specified tax return preparers under section 6011(e)(3) of the Internal Revenue Code and Treasury Regulation §§ 1.6011-7 and 301.6011-7, specifically regarding the filing restrictions placed upon specified tax return preparers by § 301.6011-7(a)(4)(i). This notice is effective for and only applicable to certain income tax returns filed by specified tax return preparers during calendar year 2011.

Tax return preparers who meet the definition of a specified tax return preparer, as defined in section 6011(e)(3)(B) and § 301.6011-7(a)(3), generally must electronically file all federal income tax returns that they prepare and file for individuals, trusts, and estates (individual income tax returns). Section 6011(e)(3) does not define the term “filed.” Section 301.6011-7(a)(4)(i) provides that an individual income tax return is considered “filed” by a specified tax return preparer “if the preparer submits the individual income tax return to the IRS on the taxpayer’s behalf.” Section 301.6011-7(a)(4)(i) further provides that submission of a tax return in non-electronic (paper) form includes “the transmission, sending, mailing or otherwise delivering of the paper individual income tax return to the IRS by the preparer, any member, employee, or agent of the preparer, or any member, employee, or agent of the preparer’s firm.” Section 301.6011-7(a)(4)(ii) provides that an individual income tax return will not be considered to be filed by a specified tax return preparer if the specified tax return preparer obtains a hand signed and dated statement from the taxpayer that states the taxpayer chooses to file the individual income tax return in paper format and that the taxpayer, and not the preparer, will submit the paper individual income tax return to the IRS. As a result, unless one of

the exceptions provided in § 301.6011-7 applies, a specified tax return preparer who prepares an individual income tax return must file that return electronically if the preparer, and not the taxpayer, files the return (*e.g.*, submits it to the IRS), and the specified tax return preparer is prohibited from mailing the return to the IRS on behalf of the taxpayer.

Solely for the 2011 calendar year, a specified tax return preparer means any person who is a tax return preparer, as defined in section 7701(a)(36) and § 301.7701-15, and who reasonably expects to file 100 or more individual income tax returns in a calendar year, and if a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer if the person’s firm members in the aggregate reasonably expect to file 100 or more individual income tax returns in a calendar year. Beginning in calendar year 2012, however, the filing threshold is lowered from 100 to 11 individual income tax returns (*i.e.*, income tax returns for individuals, estates, and trusts, such as the Form 1040 series and Form 1041).

The Treasury Department and the IRS received public comments in response to the notice of proposed rulemaking (REG-100194-10, 2010-51 I.R.B. 891) that proposed a substantially similar definition of the term “file.” (75 FR 75439, December 3, 2010.) Several commentators, including members of the tax return preparation community and tax return preparer advocacy groups, expressed concerns with this mailing restriction. These commentators stated that, as a service for some of their taxpayer-clients or to ensure proper postage and receipt by the IRS, they sometimes mail the paper individual income tax returns that they prepare to the IRS on behalf of the taxpayer-clients when requested by their taxpayer-clients, who are often elderly, disabled, on travel, or in other situations where it would not be practical or reasonable for the taxpayer-clients to mail the return to the IRS themselves.

The IRS expects specified tax return preparers to comply with the new congressionally-mandated electronic filing requirement of section 6011(e)(3). The IRS recognizes that the mailing restriction may create unforeseen or unavoidable

difficulties for immediate compliance, particularly in situations where specified tax return preparers have customarily mailed individual income tax returns to the IRS as part of the specified tax return preparer’s general business practice.

Accordingly, and solely for calendar year 2011, a specified tax return preparer who prepares individual income tax returns may mail any such return in paper format to the IRS, at the request of the taxpayer, subject to the conditions contained in this notice. The specified tax return preparer must obtain a hand-signed and dated statement containing the taxpayer’s choice to have the individual income tax return filed in paper format, and the taxpayer’s unambiguous request to have the specified tax return preparer mail the individual income tax return to the IRS. If hand-signed (by either spouse if a joint return) and dated by the taxpayer on or before the date the subject individual income tax return is mailed to the IRS, the following language contained in the signed statement will be considered sufficient to show that a taxpayer chooses to have the taxpayer’s individual income tax return filed in paper format and has requested that the specified tax return preparer mail the return on the taxpayer’s behalf:

“I do not want to have my income tax return electronically filed, and I choose to have my return filed on paper forms. I have asked my tax return preparer to mail my paper return to the IRS on my behalf.”

The statement should not be attached to the taxpayer’s individual income tax return. This statement should be retained by the specified tax return preparer. *If the taxpayer, and not the specified tax return preparer, intends to mail or otherwise file the taxpayer’s individual income tax return with the IRS, the specified tax return preparer should not obtain a statement described in this notice. Instead, the specified tax return preparer should obtain a taxpayer choice statement conforming to the requirements of Section 9 of Revenue Procedure 2011-25 and use the statement contained in Section 9.04 of that Revenue Procedure.*

The principal author of this notice is Keith Brau of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding

this notice, contact Keith Brau at (202) 622-4940 (not a toll-free call).

Nonconventional Source Fuel Credit, Section 45K Inflation Adjustment Factor, and Section 45K Reference Price

Notice 2011-30

SECTION 1. PURPOSE

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for coke or coke gas (other than from petroleum based products) for calendar year 2010. The inflation adjustment factor and the reference price are used to determine the credit allowable under § 45K for coke or coke gas. The calendar year 2010 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of coke or coke gas sold by a taxpayer to an unrelated person during the 2010 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuel, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during the taxable year. For calendar year 2010, the credit is available only for coke or coke gas. The credit amount for coke or coke gas is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines “inflation adjustment factor” for a calendar year as a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term “GNP implicit price deflator” means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines “reference price” to mean with respect to a calendar year the Secretary’s estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term “barrel-of-oil equivalent” with respect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas (other than from petroleum based products), which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall apply with respect to coke or coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(A) provides that the amount of coke or coke gas sold during any taxable year that may be taken into account to compute the credit under § 45K with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable to coke or coke gas sold after 2005, the credit shall be computed by substituting “2004” for “1979.” Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phase-out of the credit under § 45K(b)(1)

does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2010 is \$74.71.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

The inflation adjustment factor for calendar year 2010 is 1.1435. The nonconventional source fuel credit is \$3.43 per barrel-of-oil equivalent (\$3.00 x 1.1435).

SECTION 5. DRAFTING INFORMATION CONTACT

The principal author of this notice is Martha S. McRee of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. McRee at (202) 622-3110 (not a toll-free call).

Instructions for Persons Answering Questions Relating to Foreign Financial Accounts on 2010 Federal Income Tax and Information Returns

Notice 2011-31

This notice provides guidance to taxpayers regarding how to answer questions related to foreign financial accounts (FFA) found on 2010 federal income tax and information returns, *e.g.*, Schedule B of Form 1040, the “Other Information” section of Form 1041, Schedule B of Form 1065, and Schedule N of Form 1120, among others.

On February 26, 2010, the Financial Crimes Enforcement Network (FinCEN), a bureau within the Treasury Department, published a notice of proposed rulemaking (75 FR 8844) proposing amendments to the Bank Secrecy Act implementing regulations relating to the Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts (FBAR)*, found at 31 CFR 1010.350 (formerly 31 CFR 103.24). Proposed revisions to the instructions for the FBAR

were included as an attachment to the notice of proposed rulemaking. On February 24, 2011, FinCEN published final FBAR regulations (76 FR 10234). The final FBAR regulations are effective on March 28, 2011, and apply to FBARs required to be filed by June 30, 2011, with respect to foreign financial accounts maintained in calendar year 2010, as well as to FBARs for future calendar years. On March 21, 2011, the IRS posted revised FBAR instructions (titled DRAFT Final Instructions) on irs.gov at www.irs.gov/businesses/small/article/0,,id=148849,00.html. On March 26, 2011, the IRS published a revised FBAR form with accompanying instructions that reflect the amendments made by the final FBAR regulations.¹ There is no substantive difference between the text of the posted instructions (titled DRAFT Final Instructions) and the instructions that accompany the revised FBAR form, although the format of the instructions has changed.

In light of the recent publication of the final FBAR regulations, the posting of revised FBAR instructions, and the publication of a revised FBAR form with accompanying instructions, the Treasury Department and the IRS provide the following guidance concerning the FFA-related questions on 2010 federal income tax and information returns:

For Returns Filed Before March 28, 2011

Before March 28, 2011, which is the first date on which the final FBAR regulations become effective, the existing FBAR regulations (last amended April 1987) remain effective and may be referenced, along with other then-existing FBAR guidance, when answering FFA-related questions on 2010 tax and information returns.

Alternatively, persons filing a return before March 28, 2011, may reference the recently published final FBAR regulations and revised FBAR instructions (including the instructions, titled DRAFT Final Instructions, which were posted on irs.gov on March 21, 2011) when answering the FFA-related questions on 2010 returns. The IRS will take into account the recently published final FBAR regulations and the

revised FBAR instructions when evaluating the reasonableness of a person's response to the FFA-related questions on 2010 tax and information returns.

For Returns Filed On or After March 28, 2011

Beginning March 28, 2011, the recently published final FBAR regulations will be effective and should be referenced, along with the revised FBAR form and instructions, when answering FFA-related questions on 2010 tax and information returns.

The principal author of this notice is Matthew P. Howard of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Matthew P. Howard at (202) 622-4570 (not a toll-free call).

26 CFR 301.6011-7: Specified tax return preparers required to file individual income tax returns using magnetic media.

Rev. Proc. 2011-25

SECTION 1. PURPOSE

This revenue procedure provides guidance to specified tax return preparers regarding the format and content of requests for waiver of the magnetic media (electronic) filing requirement due to undue hardship, and regarding the time and manner in which specified tax return preparers who seek an undue hardship waiver of the electronic filing requirement must submit their written requests for consideration by the IRS, under section 6011(e)(3) and § 301.6011-7 of the Regulations on Procedure and Administration (26 CFR Part 301). This revenue procedure also provides guidance to tax return preparers, specified tax return preparers, and taxpayers regarding how to document a taxpayer's choice to file an individual income tax return in paper format when the return is prepared by a tax return preparer or specified tax return preparer but filed by the taxpayer.

Concurrently with publication of a notice of proposed rulemaking in the Federal Register (75 FR 75439) on December 3,

2010, the IRS released Notice 2010-85, see IR-2010-116 (December 1, 2010) and 2010-51 I.R.B. 877 (December 20, 2010), which contained a proposed revenue procedure that would provide guidance to tax return preparers regarding the format and content of undue hardship waiver requests and taxpayer choice statements. Written comments were received by the Treasury Department and the IRS in response to the notice of proposed rulemaking and concurrent notice. A public hearing was held on January 7, 2011. All comments are available for public inspection upon request. After consideration of the written comments and the comments provided at the public hearing, the proposed revenue procedure is adopted as revised by this revenue procedure. Announcement 2010-96, see 2010-52 I.R.B. 936 (December 27, 2010), announced the release of Form 8944, *Preparer e-file Hardship Waiver Request*. This notice provided that tax return preparers who meet the definition of a specified tax return preparer must use Form 8944 to voluntarily request undue hardship waivers prior to the publication of final guidance.

SECTION 2. BACKGROUND

.01 Pursuant to section 6011(e)(3), § 301.6011-7 implements the requirement that specified tax return preparers file individual income tax returns electronically if they prepare and file the returns for taxpayers. Under section 6011(e)(3)(B) and as further defined in § 301.6011-7(a)(3), a specified tax return preparer means, with respect to any calendar year, any tax return preparer within the meaning of section 7701(a)(36) and § 301.7701-15 who prepares any individual income tax return unless such tax return preparer reasonably expects to file 10 or fewer individual income tax returns in the calendar year, and if a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer unless the person's firm members in the aggregate reasonably expect to file 10 or fewer individual income tax returns in a calendar year. Solely for the 2011 calendar year, a tax return preparer will not be considered a specified tax return preparer if the preparer reasonably

¹ Filers are advised that although the instructions to the FBAR form are being revised in light of the final FBAR regulations, the data items appearing in the body of the FBAR form remain unchanged.

expects, or if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect, to file fewer than 100 individual income tax returns in the 2011 calendar year. Solely for purposes of section 6011(e)(3) and § 301.6011-7, an individual is considered a member of a firm if the individual is an employee, agent, member, partner, shareholder, or other equity holder of the firm.

.02 Section 6011(e)(3)(C) and § 301.6011-7(a)(2) define an individual income tax return as any return of income tax imposed by subtitle A on individuals, estates, and trusts. This includes the Form 1040 series of income tax returns for individuals, the Form 1041 series of income tax returns for estates and trusts, and Form 990-T (*Exempt Organization Business Income Tax Return*) when the exempt organization is a trust subject to tax on unrelated business taxable income under section 511(b).

.03 Under § 301.6011-7(b) any individual income tax return prepared by a specified tax return preparer in a calendar year must be filed on magnetic media (electronically, *i.e.*, *e-file*) if the return is filed by the specified tax return preparer.

.04 Section 301.6011-7(a)(4)(i) provides that an individual income tax return is considered to be *filed* by a tax return preparer or a specified tax return preparer if the preparer or any member, employee or agent of the preparer or the preparer's firm submits the tax return to the IRS on the taxpayer's behalf, either electronically (by e-file or other magnetic media) or in non-electronic or non-magnetic media (paper) form. Submission of a tax return in paper form includes the transmission, sending, mailing, or otherwise delivering of the paper tax return to the IRS by the tax return preparer or the specified tax return preparer, or by any member, employee, or agent of the tax return preparer or the preparer's firm.

.05 Section 301.6011-7(a)(4)(ii) also provides that an individual income tax return will not be considered to be filed, as defined in § 301.6011-7(a)(4)(i), by a tax return preparer or specified tax return preparer, or the preparer's firm, if the preparer who prepared the return obtains a hand-signed statement from the taxpayer that states the taxpayer chooses to file the

return in paper format and that the taxpayer, and not the preparer, is filing the paper return with the IRS (*e.g.*, submitting it by mail to the IRS). Such statement must be signed by the taxpayer (by either spouse if a joint return) and dated on or before the date the taxpayer files the return. The IRS may provide guidance through forms, instructions or other appropriate guidance regarding how the preparer can document a taxpayer's choice to file a paper individual income tax return. This revenue procedure provides guidance to preparers and taxpayers regarding how preparers can document a taxpayer's choice to file an individual income tax return in paper format.

.06 Section 301.6011-7(c)(1) authorizes the IRS to grant a waiver of the electronic filing requirement in cases of undue hardship to specified tax return preparers requesting an undue hardship waiver in the manner prescribed in IRS forms, instructions, or other appropriate guidance. This revenue procedure prescribes guidance on how to submit an undue hardship waiver request for consideration by the IRS.

SECTION 3. SCOPE

.01 *Undue Hardship Waiver Requests.* This revenue procedure applies to all specified tax return preparers, as defined in section 6011(e)(3)(B) and § 301.6011-7(a)(3), who seek a waiver of the electronic filing requirement in cases of undue hardship. This revenue procedure is intended to be applicable immediately to specified tax return preparers, who reasonably expect to file, or if a member of a firm whose firm's members in the aggregate reasonably expect to file, 100 or more individual income tax returns in calendar year 2011. An undue hardship waiver, however, is not needed for, and waiver requests will not be accepted from, any tax return preparer who during calendar year 2011 is not required to file individual income tax returns electronically due to the transition rule set forth in § 301.6011-7(a)(3), *i.e.*, tax return preparers who reasonably expect to file, or if a member of a firm whose firm's members in the aggregate reasonably expect to file, more than 10 but fewer than 100 individual income tax returns during calendar year 2011. For these tax return preparers,

this revenue procedure will apply to undue hardship waiver requests for calendar year 2012 and thereafter.

.02 *Documenting a Taxpayer's Choice to File Return in Paper Format.* The provisions of this revenue procedure that explain how tax return preparers and specified tax return preparers can document a taxpayer's choice to file an individual income tax return in paper format are applicable immediately.

SECTION 4. OTHER EXCLUSIONS FROM THE ELECTRONIC FILING REQUIREMENT

.01 *In General.* Section 301.6011-7(c)(2) provides for a second category of exclusion or exemption from the electronic filing requirement of section 6011(e)(3) and § 301.6011-7, administrative exemptions.

.02 *Administrative Exemptions.* Under § 301.6011-7(c)(2), the IRS may provide administrative exemptions for certain classes of specified tax return preparers or types of individual income tax returns, as the IRS determines necessary to promote the effective and efficient administration of section 6011(e)(3) and § 301.6011-7. The IRS generally will provide an administrative exemption, and not an undue hardship waiver, when technology issues affecting a range of specified tax return preparers in a similar manner prevent specified tax return preparers from filing returns electronically. Undue hardship waiver requests should not be submitted by or for specified tax return preparers, or for the individual income tax returns they prepare and file, that meet the criteria for an administrative exemption for purposes of claiming the exemption. The IRS will provide the criteria and procedures for claiming an administrative exemption, if any, through forms, instructions, or other appropriate guidance. See Notice 2011-26 for a list of current administrative exemptions.

.03 *Further Information.* Further information on the electronic filing requirement, undue hardship waiver requests, documentation for a taxpayer's choice to file in paper format, and administrative exemptions will be posted on www.irs.gov, and may include answers to Frequently Asked Questions.

SECTION 5. REQUESTS FOR WAIVER OF THE ELECTRONIC FILING REQUIREMENT DUE TO UNDUE HARDSHIP

.01 Under § 301.6011-7(c)(1), the IRS may grant waivers of the electronic filing requirement in cases of undue hardship. Undue hardship waivers generally are intended to be granted to specified tax return preparers for undue hardships that can be identified in advance before the specified tax return preparers would otherwise be required to file individual income tax returns electronically for a particular calendar year.

.02 The IRS will ordinarily grant undue hardship waivers only in rare cases. An undue hardship waiver may be granted to a specified tax return preparer for a specified period of time or for a series or class of individual income tax returns, although undue hardship waivers will not ordinarily be granted for more than one calendar year period.

.03 A specified tax return preparer must request an undue hardship waiver in the manner prescribed in this revenue procedure. See Section 6 below.

.04 The IRS will approve or deny requests for an undue hardship waiver of the electronic filing requirement based on each specified tax return preparer's particular facts and circumstances. In determining whether to approve or deny an undue hardship waiver request, the IRS may consider the specified tax return preparer's ability to file individual income tax returns electronically without incurring an undue financial hardship. The IRS will generally grant an undue hardship waiver only when the specified tax return preparer can demonstrate the undue hardship that would result by complying with the electronic filing requirement, including, but not limited to, any incremental costs to the specified tax return preparer.

.05 The fact that a specified tax return preparer does not have a computer or appropriate software or does not desire to obtain or use a computer or software does not, standing alone, constitute an undue hardship. An undue hardship waiver request based solely on this fact or personal desire, without any further explanation or justification (*e.g.*, disability or financial hardship), will be denied.

SECTION 6. WAIVER REQUEST FORM CLAIMING UNDUE HARDSHIP

.01 To request an undue hardship waiver the specified tax return preparer must complete a Form 8944, *Preparer e-file Hardship Waiver Request*, and submit the completed form and any documentation required by the instructions to the form to the IRS at the address provided in the instructions to the form.

.02 The Form 8944 must be signed and dated.

.03 The Form 8944 and any notice from the IRS granting an undue hardship waiver should not be attached to a taxpayer's paper individual income tax return. A copy of this form and any notice should be retained by the tax return preparer.

SECTION 7. TIME FOR FILING A WAIVER REQUEST

.01 Because the electronic filing requirement under section 6011(e)(3) and § 301.6011-7 is based on a determination of how many individual income tax returns a tax return preparer reasonably expects, or if a member of a firm, the firm's members in the aggregate reasonably expect, to file during a calendar year, a specified tax return preparer must make this reasonable expectation determination prior to the time the specified tax return preparer or the preparer's firm first files an individual income tax return during the calendar year.

.02 Tax return preparers who meet the definition of specified tax return preparer must therefore ordinarily submit their requests for undue hardship waivers between October 1 of the calendar year preceding the applicable calendar year and February 15 of the applicable calendar year, or within the time-frame specified in the instructions to Form 8944. This will give the IRS time to process the undue hardship waiver request. Untimely requests for undue hardship waivers will not be considered absent the existence of unusual or unforeseen and unavoidable circumstances. It is important to submit requests for undue hardship waivers timely because, if a waiver request is denied, it can take up to 45 days to obtain authorization from the IRS to electronically file individual income tax returns. See IRS Publication

3112 (*IRS e-file Application and Participation*).

SECTION 8. APPROVAL OF THE WAIVER REQUEST AND RECONSIDERATION OF DENIED WAIVER REQUESTS

.01 The IRS will review and process undue hardship waiver requests in a timely manner and will send the specified tax return preparer written notice of any approval or denial of the undue hardship waiver request. The IRS will not be considered to have waived the electronic filing requirement unless the specified tax return preparer receives written notice from the IRS that the undue hardship waiver request has been approved.

.02 If an undue hardship waiver request is denied, the specified tax return preparer may send a written request for reconsideration to the address listed on the written notice of denial by the date specified on that notice. The specified tax return preparer must state in the request for reconsideration the grounds for reconsideration and may include additional information or documentation to support the request for reconsideration. The IRS will make a reconsideration determination in writing on whether to approve or deny the undue hardship waiver request, as supplemented by the request for reconsideration and will send the specified tax return preparer written notice of any approval or denial of the undue hardship waiver request. There is no further administrative review of this reconsideration determination, nor is there a right to judicial review of an adverse determination.

SECTION 9. DOCUMENTING A TAXPAYER'S CHOICE TO FILE IN PAPER FORMAT

.01 Section 301.6011-7(a)(4)(i) provides that an individual income tax return is considered to be *filed* by a tax return preparer or a specified tax return preparer if the preparer submits the tax return to the IRS on the taxpayer's behalf, either electronically (by e-file or other magnetic media) or in non-electronic (paper) form, and that submission of an individual income tax return by a tax return preparer or a specified tax return preparer in non-electronic form includes the transmission,

sending, mailing or otherwise delivering of the paper tax return to the IRS by the preparer, any member, employee, or agent of the preparer, or any member, employee, or agent of the preparer's firm. Section 301.6011-7(a)(4)(ii), however, provides that an individual income tax return will not be considered to be filed, as defined in § 301.6011-7(a)(4)(i), by a tax return preparer or specified tax return preparer if the tax return preparer or specified tax return preparer who prepared the return obtains, on or prior to the date the return is filed, a hand-signed (by either spouse if a joint return) and dated statement from the taxpayer that states the taxpayer chooses to file the return in paper format, and that the taxpayer, and not the preparer, is filing the paper return with the IRS (e.g., submitting it by mail to the IRS).

.02 A tax return preparer or specified tax return preparer should document a taxpayer's choice to file in paper format in the manner prescribed in this revenue procedure.

.03 A taxpayer's choice to file an individual income tax return in paper format must be in writing, must affirm that the taxpayer is choosing to file the return in paper format, and must affirm that the taxpayer, and not the preparer, is filing the return (e.g., submitting it by mail to the IRS). This statement must be hand-signed and dated by the taxpayer (by either spouse if a joint return) on or before the date the taxpayer's return is filed with the IRS. The choice to file in paper format is the taxpayer's alone.

.04 If hand-signed and dated by the taxpayer on or before the date the subject individual income tax return is filed with the IRS, the following statement contained in the signed writing will be sufficient to show that a taxpayer chooses to file the taxpayer's return in paper format and that the taxpayer, and not the tax return preparer or specified tax return preparer, will file the return:

My tax return preparer [INSERT PREPARER'S NAME] has informed me that [INSERT s/he] may be required to electronically file my [INSERT TAX YEAR] individual income tax return [INSERT TYPE OF RETURN: Form 1040, Form 1040A, Form 1040EZ, Form 1041, Form 990-T] if [INSERT s/he] files it with the IRS on my behalf (e.g., submits it by mail to the IRS). I

understand that electronic filing may provide a number of benefits to taxpayers, including an acknowledgement that the IRS received the returns, a reduced chance of errors in processing the returns, and faster refunds. I do not want to have my return electronically filed, and I choose to file my return on paper forms. I will mail or otherwise submit my paper return to the IRS myself. My preparer will not file or otherwise mail or submit my paper return to the IRS.

.05 The statement containing the taxpayer's choice to file in paper format should not be attached to the taxpayer's individual income tax return. This statement should be retained by the tax return preparer.

.06 The burden of compliance with the electronic filing requirement contained in section 6011(e)(3) and § 301.6011-7 is on the tax return preparer and specified tax return preparer. Neither the fact that the IRS receives a taxpayer's paper individual income tax return in the mail nor the fact that the tax return preparer's or specified tax return preparer's general business practice is to not mail paper individual income tax returns for clients necessarily establishes that the preparer did not file a particular individual income tax return with the IRS. If the tax return preparer or specified tax return preparer obtains a hand-signed and dated statement in compliance with the requirements established in this Section 9, the hand-signed statement will demonstrate compliance should the IRS question a preparer about the filing of a particular individual income tax return in paper format.

.07 An email message from the taxpayer is insufficient to demonstrate a taxpayer's choice to file an individual income tax return in paper format. If sent as a scanned attachment to an email, however, a copy of a hand-signed and dated statement in compliance with § 301.6011-7(a)(4)(ii) and Section 9 of this revenue procedure will suffice to demonstrate compliance.

.08 This Section 9 does not apply either to individual income tax returns that meet, or to specified tax return preparers who meet, the criteria for an administrative exemption. See Section 4 above.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective on January 1, 2011.

SECTION 11. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure relating to undue hardship waiver requests has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2201. The collection of information related to documenting a taxpayer's choice to file in paper format was previously submitted to the Office of Management and Budget for review, see 75 F.R. 75439 for details, and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2201.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in Sections 5 and 6. This information is required for a tax return preparer who meets the definition of specified tax return preparer to obtain an undue hardship waiver of the electronic filing requirement contained in section 6011(e)(3) and § 301.6011-7. This information will be used in exercising the IRS's discretion to grant undue hardship waivers and approving or denying requests for such waivers based on the specified tax return preparer's particular facts and circumstances, or for purposes of reconsidering an undue hardship waiver request that has been denied. The likely respondents are individuals and small businesses who prepare and file individual income tax returns as paid tax return preparers and who meet the definition of specified tax return preparer contained in section 6011(e)(3)(B) and § 301.6011-7(a)(3).

The estimated total annual reporting and/or recordkeeping burden is 3,949 total hours for waiver requests for calendar year 2011, and 7,328 total hours for waiver requests for calendar year 2012.

The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour. We calculated 15 minutes of preparation for a basic waiver without attachments and minimal explanation (*e.g.*, federal disaster declaration); 31 minutes for a bankruptcy waiver with attachments; 51 minutes for “other” waiver with attachments and detailed explanation; and 2 hours for an economic hardship waiver with attachments. We estimated 6 minutes for recordkeeping, consisting

of maintaining a copy of the information submitted for the respondent’s records.

The estimated number of respondents and/or recordkeepers is 3,949 for waiver requests for calendar year 2011 and 7,328 for waiver requests for calendar year 2012.

The estimated annual frequency of responses (used for reporting requirements only) is no more than once per respondent.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is Keith Brau of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Keith Brau at (202) 622-4940 (not a toll-free call).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as “rulings”) that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel’s Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2010–27 through 2010–52 is in Internal Revenue Bulletin 2010–52, dated December 27, 2010.

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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
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TD	Treasury Decision
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