

Part III – Administrative, Procedural, and Miscellaneous

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) 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).