

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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subject: The application of the additions to tax under sections 6651 and 6652 to a filer that submitted a specified return on paper when required to file the return electronically

This advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Is a filer that submits specified returns¹ on paper when required to file the specified returns electronically subject to the addition to tax for failure to timely file under section 6651, or section 6652 if appropriate.

CONCLUSION

Yes, the additions to tax for failure to timely file a tax return under section 6651(a)(1), and for failure to timely file certain information returns, registration statements, etc., under section 6652(c), apply to a filer that submits paper Forms 5330, 4720, 5227, 1042, or 1120-POL when the filer is required to file electronically by regulations.

BACKGROUND

On July 23, 2021, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (NPRM) (REG-102951-16) in the Federal

¹ The specific forms included in the incoming request are Forms 5330, *Return of Excise Taxes Related to Employee Benefit Plans*; Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*; Form 5227, *Split-Interest Trust Information Return*; Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*; and Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*.

Register (86 FR 39910), providing guidance on the electronic-filing rules for partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns, certain information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns.

The proposed regulations would require filers of Forms 5330, 4720, 5227 and 1120-POL to file those returns electronically if the filer is required to file at least 10 returns of any type during the calendar year. The proposed regulations would also require filers of Forms 1042 to file those returns electronically if the filer is required to file 250 returns of any type during the calendar year, or if the filer is a financial institution (regardless of the number of returns the financial institution is required to file during the calendar year). Until final regulations are published, these forms are not subject to electronic filing requirements, except Form 4720 when required to be electronically filed by section 6033(n). See Notice 2021-01, 2021-2 I.R.B. 315.

LAW AND ANALYSIS

Section 6011(a) provides broad authority for the Secretary to require persons to make a return or statement according to the forms and regulations prescribed by the Secretary. Once the NPRM is finalized as a Treasury decision, the regulations §§ 54.6011-3, 301.1474-1, 301.6011-12, 301.6011-13, 301.6011-15, 301.6012-2 will require the electronic filing of Forms 5330, 4720, 5227, 1042, and 1120-POL in certain circumstances.² Those requirements will have to be met in order for a return to be properly filed.

Courts have long recognized the necessity for taxpayers to meticulously comply with filing requirements. See Lucas v. Pilliod Lumber Co., 281 U.S. 245, 249 (1930) (noting “[t]he necessity for meticulous compliance [with filing requirements] by the taxpayer” in order to benefit from the statute of limitations on assessment); Smyth v. Commissioner, T.C. Memo. 2017-29 (holding that return was not filed under section 6091 because it was not delivered to the proper location or person). See also Coffey v. Commissioner, 987 F. 3d 808, 812 (8th Cir. 2021) cert. denied, 142 S. Ct. 758 (2022) (“The purpose of filing requirements ‘is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.’”) citing Commissioner v. Lane-Wells Co., 321 U.S. 219 (1944).

A filer that submits a return on paper when required to file electronically has failed to file the return according to the forms and regulations prescribed by the Secretary. Thus, the filer may be subject to the addition to tax for failure to timely file under section 6651(a)(1), or 6652(c) if appropriate, absent a showing of reasonable cause.

HAZARDS AND OTHER CONSIDERATIONS

² This statement assumes that final regulations are published containing the same or substantially similar provisions as the proposed regulations. However, caution is warranted because final regulations may differ substantively from proposed regulations.



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