



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9730]

RIN 1545-BM50

Extension of Time to File Certain Information Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that remove the automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G). The temporary regulations allow only a single 30-day non-automatic extension of time to file these information returns. These changes are being implemented to accelerate the filing of forms in the W-2 series (except Form W-2G) so they are available earlier in the filing season for use in the IRS's identity theft and refund fraud detection processes. In addition, the temporary regulations update the list of information returns subject to the rules regarding extensions of time to file. The temporary regulations affect taxpayers who are required to file

the affected information returns and need an extension of time to file. The substance of the temporary regulations is included in the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective date: These regulations are effective on July 1, 2016.

Applicability date: For dates of applicability, see §1.6081-8T(g) and (h).

FOR FURTHER INFORMATION CONTACT: Jonathan R. Black,
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SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 6081 of the Internal Revenue Code (Code) regarding extensions of time to file certain information returns. Effective for filing season 2017, this document removes §1.6081-8 and adds new §1.6081-8T. Section 1.6081-8 will remain in effect for filing season 2016. Section 1.6081-8 currently provides an automatic 30-day extension of time to file information returns on forms in the W-2 series (including Forms W-2, W-2AS, W-2G, W-2GU, and W-2VI), 1095 series, 1098 series, 1099 series, and 5498 series, and on Forms 1042-S and 8027, and

allows an additional 30-day non-automatic extension of time to file those information returns in certain cases.

The temporary regulations §1.6081-8T are substantially identical to the regulations §1.6081-8 that will be removed, except that the temporary regulations: (1) add information returns on forms in the 1097 series and Forms 1094-C, 3921, and 3922 to the list of information returns with procedures prescribed by regulations for the extension of time to file; (2) remove information returns on forms in the W-2 series (except Form W-2G) from the list of information returns eligible for the automatic 30-day extension of time to file, and instead provide a single 30-day non-automatic extension of time to file those information returns; and (3) clarify that the procedures for requesting an extension of time to file in the case of forms in the 1095 series apply to information returns on Forms 1095-B and 1095-C, but not 1095-A.

The due dates imposed by statute, regulation, or form instruction for filing information returns on forms in the W-2 series, 1097 series, 1098 series, and 1099 series, and Forms 1094-C (when filed as a stand-alone information return), 1095-B, 1095-C, 3921, 3922, and 8027 on paper are either February 28 or the last day of February of the calendar year following the calendar year for which the information is being reported. The

due date for filing these information returns electronically is March 31 of the calendar year following the calendar year for which the information is being reported. The information returns on forms in the 5498 series and the Form 1042-S, whether filed on paper or electronically, are due March 15 and May 31, respectively, of the calendar year following the calendar year for which the information is being reported. All of these information returns are filed with the IRS, except for information returns on forms in the W-2 series (other than Form W-2G), which are filed with the Social Security Administration. Filers who fail to timely and accurately file these information returns may be subject to penalties under section 6652 (regarding failure to file certain information returns), section 6693 (regarding failure to report on certain tax-favored accounts or annuities), or section 6721 (regarding failure to timely and accurately file information returns defined by section 6724(d)(1)).

Section 6081(a) generally provides that the Secretary may grant a reasonable extension of time, not to exceed 6 months, for filing any return, declaration, statement, or other document required by Title 26 or by regulation. The regulations under section 6081 generally provide rules for extensions of time to file returns. The regulations under §1.6081-8 provide specific

rules for extensions of time to file certain information returns.

Under §1.6081-8(a), a person required to file certain information returns (the filer), or the person transmitting the return for the filer (the transmitter), can currently receive an automatic 30-day extension of time to file those information returns. A filer or transmitter obtains an automatic 30-day extension of time to file by submitting a Form 8809, "Application for Extension of Time to File Information Returns," to the IRS on or before the due date of the information return.

Section 1.6081-8(d) also currently provides that a filer or transmitter that obtains an automatic 30-day extension of time to file may request an additional 30-day extension of time to file by submitting a second Form 8809 on or before the date that the automatic 30-day extension of time to file expires. That additional 30-day extension of time to file under §1.6081-8(d) is not automatically granted by the IRS. Unlike requests to obtain an automatic 30-day extension of time to file under §1.6081-8(a), a filer or transmitter that requests an additional 30-day extension of time to file under §1.6081-8(d) is required to sign the Form 8809 under penalties of perjury and include an explanation of why an additional extension of time to file is needed. No further extensions of time to file are permitted

under §1.6081-8.

Employers eligible to file information returns on forms in the W-2 series on an expedited basis under §31.6071(a)-1(a)(3)(ii) are not eligible to obtain the automatic 30-day extension of time to file those information returns under §1.6081-8 because they received an automatic extension of time to file information returns on forms in the W-2 series under Rev. Proc. 96-57 (1996-2 CB 389), see §601.601(d)(2)(ii)(b) of this chapter.

A filer or transmitter seeking an extension of time to furnish statements to recipients is required to separately request an extension of time to furnish the statements under rules applicable to those statements.

Explanation of Provisions

The IRS uses third-party information returns to increase voluntary compliance, verify accuracy of tax returns, improve collection of taxes, and combat fraud, including fraudulent refund claims filed by unscrupulous preparers and individuals using the stolen identities of legitimate taxpayers. Identity theft and refund fraud is a persistent and evolving threat to the nation's tax system. It places an enormous burden on the United States Government, with the most painful and immediate impact being on the victims whose personal information is used

to commit the crime and the most pervasive impact being an erosion of public confidence in the tax system.

Identity thieves often electronically file their fraudulent refund claims early in the tax filing season, using fictitious wage and other information of legitimate taxpayers.

Unscrupulous preparers also electronically file early in the tax filing season, over-claiming deductions and credits and underreporting income for unwitting, as well as complicit, taxpayers. In many cases, the IRS is unable to verify the wage and other information reported on tax returns filed before April 15th, in part because the IRS does not receive the information returns reporting this information until later in the filing season.

Although paper information returns are generally due to be filed by February 28 or the last day of February of the calendar year following the calendar year for which the information is reported, an extension of time to file under §1.6081-8 may currently extend the due date until the end of March or, if a non-automatic extension is also granted, the end of April. Similarly, although electronically-filed information returns are generally due by March 31 of the calendar year following the calendar year for which the information is reported, an extension of time to file under §1.6081-8 may extend the due

date until the end of April or, if a non-automatic extension is also granted, the end of May.

Receipt of information returns earlier in the filing season will improve the IRS's ability to identify fraudulent refund claims and stop the refunds before they are paid. The United States Government Accountability Office (GAO) has cited the IRS's receipt of information returns late in the filing season as a contributing factor in payment of fraudulent refunds due to identity theft and preparer misconduct. See GAO Report GAO-14-633, Identity Theft, Additional Actions Could Help IRS Combat the Large, Evolving Threat of Refund Fraud. Removing the automatic 30-day extension of time to file is an affirmative step to accelerate the filing of information returns so they are available earlier in the filing season for use in the IRS's refund fraud detection processes.

Over the next several years, the IRS intends to remove the 30-day automatic extension of time to file certain information returns. Under §1.6081-8T, which will not be effective until the 2017 filing season, the first information returns subject to these new rules are information returns on forms in the W-2 series (except Form W-2G). These information returns are particularly helpful to the IRS for identifying fraudulent identity theft refund claims and preventing their payout. This

is because a significant portion of most taxpayers' income and withholding information is reported on Forms W-2. Forms W-2 are also a major source of the false income and withholding that is reported by identity thieves and unscrupulous preparers. Having access to Forms W-2 earlier in the filing season will improve the IRS's ability to conduct pre-refund matching and identify incidences of identity theft and tax refund fraud.

Accordingly, §1.6081-8T provides a single 30-day non-automatic extension of time to file information returns on forms in the W-2 series (except Form W-2G) due in 2017 that the IRS may, in its discretion, grant if the IRS determines that an extension of time to file is warranted based on the filer's or transmitter's explanation attached to the Form 8809 signed under the penalties of perjury. The IRS anticipates that it will grant the non-automatic extension of time to file only in limited cases where the filer's or transmitter's explanation demonstrates that an extension of time to file is needed as a result of extraordinary circumstances or catastrophe, such as a natural disaster or fire destroying the books and records a filer needs for filing the information returns. If the IRS does not grant the extension of time to file, information returns filed after their due dates are not timely filed, regardless of whether the application for extension of time to file was filed

timely.

The IRS intends to eventually remove the automatic 30-day extension of time to file the other forms listed in §1.6081-8T and replace it with a single non-automatic 30-day extension of time to file. Therefore, proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register** would remove the automatic 30-day extension of time to file these other information returns. As currently drafted, the proposed regulations would affect information returns due January 1 of the calendar year beginning after the date of publication of final regulations in the **Federal Register**, but the preamble to those proposed regulations provides that final regulations will not be effective any earlier than the 2018 filing season.

Treasury and the IRS request comments on the appropriate timing of the removal of the automatic extension of time to file information returns covered by §1.6081-8T, such as Form 1042-S, including whether special transitional considerations should be given for any category or categories of forms or filers relative to other forms or filers. Please follow the instructions in the "Comments and Requests for Public Hearing" section in the notice of proposed rulemaking accompanying these temporary regulations in this issue of the **Federal Register**.

Section 1.6081-8T also updates the list of information returns that are currently covered by §1.6081-8. Forms 3921 and 3922 are being added to §1.6081-8T because these forms have been included on Form 8809 since the June 2009 revision, which coincided with the revision of the regulations requiring those forms under section 6039. See TD 9470 (74 FR 59087) November 17, 2009. Forms in the 1097 series are being added because they have similarly been included on Form 8809 since the September 2010 revision, which coincided with the publication of the notice requiring the filing of the only active form in the 1097 series, Notice 2010-28 (2010-15 IRB 541).

In addition, the Form 1094-C is being added to the list of forms in §1.6081-8T. In most cases the Form 1094-C is filed as a mere transmittal with the Form 1095-C and, therefore, the due date of the Form 1094-C is the same as the Form 1095-C, including extensions. However, in certain cases, the Form 1094-C is filed as a stand-alone information return. See TD 9661, (79 FR 13231) March 10, 2014. When Form 1094-C is filed as a stand-alone information return, it is subject to the same rules regarding extensions of time to file as other information returns. Accordingly, Form 1094-C has been added to the list of forms subject to extension under §1.6081-8T.

Section 1.6081-8T also replaces the general reference to

the forms in the 1095 series that was added to §1.6081-8 on March 10, 2014, by TD 9660 (79 FR 13220) with specific references to Forms 1095-B and 1095-C. Form 1095-A was not intended to be included in §1.6081-8, because the timing rules for filing the Form 1095-A are governed by §1.36B-5. See TD 9663 (79 FR 26113) May 7, 2014.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. 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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. As stated in this preamble, these regulations remove the automatic 30-day extension of time to file information returns on Forms in the W-2 series (except for Form W-2G). Starting in filing season 2017, filers and transmitters may request only one 30-day extension of time to file Form W-2 by timely submitting a Form 8809, including an explanation of the reasons for requesting the extension and signed under

penalty of perjury. Although the regulation may potentially affect a substantial number of small entities, the economic impact on these entities is not expected to be significant because filers who are unable to timely file as a result of extraordinary circumstances or catastrophe may continue to obtain a 30-day extension through the Form 8809 process. The form takes approximately 20 minutes to prepare and submit to the IRS. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jonathan R. Black of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoptions of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

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

Par. 2. Section 1.6081-8 is revised to read as follows:

§1.6081-8 Automatic extension of time to file certain information returns.

[Reserved]. For further guidance, see §1.6081-8T(a) through (g).

Par. 3. Section 1.6081-8T is added to read as follows:

§1.6081-8T Extension of time to file certain information returns (temporary).

(a) Information returns on Form W-2G, 1042-S, 1094-C, 1095-B, 1095-C, 1097 series, 1098 series, 1099 series, 3921, 3922, 5498 series, or 8027--(1) Automatic extension of time to file. A person required to file an information return (the filer) on Form W-2G, 1042-S, 1094-C, 1095-B, 1095-C, 1097 series, 1098 series, 1099 series, 3921, 3922, 5498 series, or 8027 will be allowed one automatic 30-day extension of time to file the information return beyond the due date for filing it if the filer or the person transmitting the information return for the filer (the transmitter) files an application in accordance with paragraph (c)(1) of this section.

(2) Non-automatic extension of time to file. One additional 30-day extension of time to file an information return on a form listed in paragraph (a)(1) of this section may be allowed if the filer or transmitter submits a request for the additional extension of time to file before the expiration of

the automatic 30-day extension of time to file. No extension of time to file will be granted under this paragraph (a)(2) unless the filer or transmitter has first obtained an automatic extension of time to file under paragraph (a)(1) of this section. To request the additional 30-day extension of time to file, the filer or transmitter must satisfy the requirements of paragraph (c)(2) of this section. No additional extension of time to file will be allowed for an information return on a form listed in paragraph (a)(1) of this section pursuant to §1.6081-1 beyond the extensions of time to file provided by paragraph (a)(1) of this section and this paragraph (a)(2).

(b) Information returns on forms in the W-2 series (except Form W-2G). Except as provided in paragraph (f) of this section, the filer or transmitter of an information return on forms in the W-2 series (except Form W-2G) may only request one non-automatic 30-day extension of time to file the information return beyond the due date for filing it. To make such a request, the filer or transmitter must submit an application for an extension of time to file in accordance with paragraph (c)(2) of this section. No additional extension of time to file will be allowed for information returns on forms in the W-2 series pursuant to §1.6081-1 beyond the 30-day extension of time to file provided by this paragraph (b).

(c) Requirements--(1) Automatic extension of time to file.

To satisfy this paragraph (c) (1), an application must--

(i) Be submitted on Form 8809, "Request for Extension of Time to File Information Returns," or in any other manner as may be prescribed by the Commissioner; and

(ii) Be filed with the Internal Revenue Service office designated in the application's instructions on or before the due date for filing the information return.

(2) Non-automatic extension of time to file. To satisfy this paragraph (c) (2), a filer or transmitter must--

(i) Submit a complete application on Form 8809, or in any other manner prescribed by the Commissioner, including a detailed explanation of why additional time is needed;

(ii) File the application with the Internal Revenue Service in accordance with forms, instructions, or other appropriate guidance on or before the due date for filing the information return (for purposes of paragraph (a) (2) of this section, determined with regard to the extension of time to file under paragraph (a) (1) of this section); and

(iii) Sign the application under penalties of perjury.

(d) Penalties. See sections 6652, 6693, and 6721 through 6724 for failure to comply with information reporting requirements on information returns described in this section.

(e) No effect on time to furnish statements. An extension of time to file an information return under this section does not extend the time for furnishing a statement to the person with respect to whom the information is required to be reported.

(f) Form W-2 filed on expedited basis. This section does not apply to an information return on a form in the W-2 series if the procedures authorized in Rev. Proc. 96-57 (1996-2 CB 389) (or a successor revenue procedure) allow an automatic extension of time to file the information return. See §601.601(d)(2)(ii)(b) of this chapter.

(g) Effective/applicability date. This section applies to requests for extensions of time to file information returns due after December 31, 2016.

(h) Expiration date. The applicability of this section expires on August 10, 2018.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: July 31, 2015

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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