



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-102951-16]

RIN 1545-BN36

Filing Requirements for Information Returns Required on Magnetic Media (Electronically)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations amending the rules for determining whether information returns must be filed using magnetic media (electronically). The proposed regulations would require that all information returns, regardless of type, be taken into account to determine whether a person meets the 250-return threshold and, therefore, must file the information returns electronically. The proposed regulations also would require any person required to file information returns electronically to file corrected information returns electronically, regardless of the number of corrected information returns being filed. The proposed regulations will affect persons required to file information returns.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-102951-16), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-102951-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Alternatively, persons may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102951-16).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael Hara, (202) 317-6845; concerning the submission of comments and requests for a public hearing, Regina L. Johnson, (202) 317-5177 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6011(e) relating to the filing of information returns on magnetic media. Section 6011(e) authorizes the Secretary to prescribe regulations regarding the filing of returns on magnetic media.

Section 6011(e)(2)(A) prohibits the Secretary from requiring persons to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year. Section 6011(e)(2)(B) provides that, in prescribing regulations, the Secretary shall consider the taxpayer's ability to comply at reasonable cost with the regulations' requirements. Section 301.6011-2(a)(1) provides that magnetic media includes any magnetic media permitted under the applicable regulations, revenue procedures, or publications, or, in the case of returns filed with the Social Security

Administration, any magnetic media permitted under Social Security Administration publications, including electronic filing.

Section 301.6011-2 provides rules for when information returns described in §301.6011-2(b), such as Form 1042-S, “Foreign Person’s U.S. Source Income Subject to Withholding;” forms in the 1099 series; and Form W-2, “Wage and Tax Statement,” must be filed electronically. Under §301.6011-2(c), a person is not required to file a type of information return covered by §301.6011-2(b) electronically unless the person is required to file 250 or more such returns during the calendar year. Sections 301.6011-2(c)(1)(i) and (iii) and the Examples in §301.6011-2(c)(1)(iv) describe that the 250-return threshold applies separately to each type of information return and each type of corrected information return filed, and, therefore, the forms are not aggregated for purposes of determining whether the 250-return threshold is satisfied.

Section 301.6011-2(c)(2) allows the Commissioner to waive the requirement to file electronically if the request for waiver demonstrates hardship and provides that the principal factor in determining hardship will be the extent, if any, to which the cost of electronic filing exceeds the cost of filing on other media.

When the rules for determining the 250-return threshold, including the rule providing that each type of information return is counted separately and not aggregated, were originally published, electronic filing was in the early stages of development and was not as commonly used as it is today. The non-aggregation rule helped to reduce cost and ease burden on taxpayers, given the existing limits on technology and accessibility to such technology. Since then, significant advances in technology have made electronic filing more prevalent and accessible. As a result, electronic filing is

less costly and most often easier than paper filing. In fact, most information returns are filed electronically. In tax year 2015, approximately 98 percent of information returns were filed electronically. In tax year 2016, the percentage of information returns filed electronically rose to 98.5 percent. Advances in tax return preparation software, as well as the prevalence of tax return preparers and third-party service providers who offer information return preparation and electronic filing, have also contributed to the increase in electronic filing.

The concerns regarding taxpayer burden and cost associated with electronic filing have been significantly mitigated since the non-aggregation rule in §301.6011-2(c)(1)(i) and (iii) of the regulations was first published. Therefore, determining the 250-return threshold on a form-by-form basis without aggregation is no longer necessary to relieve taxpayer burden and cost. Accordingly, these regulations simplify the rules for determining the 250-return threshold by requiring aggregation of all information returns covered by §301.6011-2(b) for purposes of determining the 250-return threshold. In addition, these regulations provide that corrected information returns must be filed electronically if the original information returns were filed electronically. These rule changes will help facilitate efficient and effective tax administration.

Explanation of Provisions

These proposed regulations remove the non-aggregation rule in §301.6011-2(c)(1)(iii) that counts the number of information returns required to be filed on a form-by-form basis. The proposed regulations add a new paragraph (4) to §301.6011-2(b) to provide that if during a calendar year a person is required to file a total of 250 or more information returns of any type covered by §301.6011-2(b), the person is required to file

those information returns electronically. For example, under these proposed regulations, if a person is required to file 200 Forms 1099-INT, “Interest Income,” and 200 Forms 1099-DIV, that person must file all Forms 1099-INT and Forms 1099-DIV electronically because that person is required to file, in the aggregate, at least 250 information returns covered by §301.6011-2(b). Corrected information returns are not taken into account in determining whether the 250-return threshold is met under proposed §301.6011-2(b)(4) for purposes of determining whether information returns covered by §301.6011-2(b) must be filed electronically. Examples in proposed §301.6011-2(c)(1)(iv) illustrate this rule.

The proposed regulations also provide that corrected information returns covered by §301.6011-2(b) must be filed electronically if the information returns originally filed for the calendar year are required to be filed electronically. If fewer than 250 returns covered by §301.6011-2(b) are required to be filed for the calendar year, the original returns for the calendar year, as well as the corrected returns for the calendar year, are not required to be filed electronically. See proposed §301.6011-2(c)(1)(iv), Example 4.

The proposed regulations also amend §301.6721-1(a)(2)(ii) regarding the penalty for failure to file correct information returns to remove references to the prior rule for determining the number of returns on a form-by-form basis and the prior corrected return rule.

The proposed regulations do not amend the existing regulations allowing persons who are required to file returns electronically to request a waiver of the electronic-filing requirement. See §301.6011-2(c)(2). This waiver authority will be exercised so as not

to unduly burden taxpayers lacking the necessary data-processing capabilities or access to return preparers and third-party service providers at a reasonable cost.

Proposed Effective/Applicability Date

These proposed regulations will be effective on the date of the publication of the Treasury Decision adopting these rules as final in the **Federal Register**. However, to give information-return filers sufficient time to comply with these regulations, these proposed regulations will not apply to information returns required to be filed before January 1, 2019. Accordingly, these proposed regulations provide that §§ 301.6011-2(b)(4) and 301.6721-1(a)(2)(ii), as amended, will be effective for information returns required to be filed after December 31, 2018. Section 301.6011-2(b)(5), as amended, will be effective for corrected information returns filed after December 31, 2018.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

When the Internal Revenue Service issues a proposed rulemaking imposing a collection of information requirement on small entities, the Regulatory Flexibility Act (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(b) 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.

This proposed rule directly affects information-return filers that file more than 250 returns of any type covered by §301.6011-2(b), which includes a substantial number of small entities. However, the IRS has determined that the economic impact on small entities affected by the proposed rule would not be significant. Under sections 6011(e) and §301.6011-2(c)(1), information-return filers already must file information returns electronically if during a calendar year a person is required to file a total of 250 or more information returns of any type covered by §301.6011-2(b). The proposed rule merely amends the method of counting those 250 returns to determine if the 250-return threshold is met. Information filers may request a waiver of the electronic-filing requirement if they lack the necessary data-processing capabilities or access to return preparers and third-party service providers at a reasonable cost, and the IRS routinely grants meritorious hardship waiver requests. Accordingly, the burden on the limited number of small entities that are not currently filing electronically will be slight, and small entities that would experience a hardship because of this proposed rule may seek a waiver. The Commissioner of the IRS hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The IRS invites comment from members of the public who believe there will be a significant impact on small information return filers. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments that are submitted

timely to the IRS as prescribed in this preamble under the ADDRESSES heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Michael Hara of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding a sectional authority for §301.6721-1 to read as follows:

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

* * * * *

Section 301.6721-1 is also issued under 26 U.S.C. 6011(e).

* * * * *

Par. 2. Section 301.6011-2 is amended as follows:

- a. Paragraphs (b)(4) through (6) are added.
- b. Paragraphs (c)(1)(iii) and (iv) are removed.

c. Paragraph (g)(2) is revised.

The additions and revisions read as follows:

§ 301.6011-2 Required use of magnetic media.

* * * * *

(b) * * *

(4) Aggregation of returns. For purposes of determining whether the number of returns a person is required to file meets the 250-return threshold under paragraph (c)(1)(i) of this section, all types of returns covered by paragraphs (b)(1) and (2) of this section required to be filed during the calendar year are aggregated. Corrected returns are not taken into account in determining whether the 250-return threshold is met.

(5) Corrected returns. Any person required to file returns covered by paragraphs (b)(1) and (2) of this section on magnetic media for a calendar year must file corrected returns covered by paragraphs (b)(1) and (2) of this section for such calendar year on magnetic media.

(6) Examples. The provisions of paragraphs (b)(4) and (5) of this section are illustrated by the following examples:

Example 1. For the 2018 calendar year, Company W is required to file 200 Forms 1099-INT, "Interest Income," and 200 Forms 1099-DIV, "Dividends and Distributions," for a total of 400 returns. Because Company W is required to file 250 or more returns covered by paragraphs (b)(1) and (2) of this section for the calendar year, Company W must file all Forms 1099-INT and Forms 1099-DIV electronically.

Example 2. During the 2018 calendar year, Company X has 200 employees in Puerto Rico and 75 employees in American Samoa, for a total of 275 returns. Because

Company X is required to file 250 or more returns covered by paragraphs (b)(1) and (2) of this section for the calendar year, Company X must file Forms 499R-2/W-2PR, “Commonwealth of Puerto Rico Withholding Statement,” and Forms W-2AS, “American Samoa Wage and Tax Statement,” electronically.

Example 3. For the 2018 calendar year, Company Y files 300 original Forms 1099-MISC, “Miscellaneous Income.” Later, Company Y files 70 corrected Forms 1099-MISC for the 2018 calendar year. Because Company Y is required to file 250 or more returns covered by paragraphs (b)(1) and (2) of this section for the calendar year, Company Y must file its original 300 Forms 1099-MISC, as well as its 70 corrected Forms 1099-MISC for the 2018 calendar year, electronically.

* * * * *

(g) * * *

(2) Paragraphs (a)(1), (b)(1) and (2), (c)(1)(i), (c)(2), (d), (e), and (f) of this section are effective for information returns required to be filed after December 31, 1996. For information returns required to be filed after December 31, 1989, and before January 1, 1997, see section 6011(e) [26 USC 6011(e)]. Paragraph (b)(4) of this section is effective for information returns required to be filed after December 31, 2018. Paragraph (b)(5) of this section is effective for corrected information returns filed after December 31, 2018.

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Par. 3. Section 301.6721-1 is amended as follows:

- a. By removing the fifth through seventh sentences in paragraph (a)(2)(ii).
- b. Adding paragraph (h).

The revisions and addition reads as follows:

§301.6721-1 Failure to file correct information returns.

* * * * *

(h) Effective dates. Paragraph (a)(2)(ii) of this section is effective for information returns required to be filed after December 31, 2018.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

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