

## Part IV - Items of General Interest

### Form 1120, Form 1120S, Form 990, and Form 990-PF Electronic Filing Waiver Request Procedures

Notice 2005-88

#### **Background**

This Notice provides procedures for corporations, electing small business corporations, and organizations required to file returns under section 6033 (taxpayers) to request a waiver of the requirement to electronically file Form 1120, U.S. Corporation Income Tax Return; Form 1120S, U.S. Income Tax Return for an S Corporation; Form 990, Return of Organization Exempt From Income Tax; and Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation. This Notice also includes guidance on the timely filing of a return required to be electronically filed that is rejected.

On January 12, 2005, the Treasury Department and the Internal Revenue Service (Service) issued temporary regulations that, beginning in 2006, require certain large corporations, electing small business corporations and organizations required to file returns under section 6033 to electronically file their income tax or annual information returns. T.D. 9175, 70 F.R. 1212.

Section 6011(e)(2) provides that the Service may not require an entity to file returns on electronic media unless the entity is required to file at least 250 returns during the calendar year. Under the temporary regulations, corporations that meet this threshold and that have assets of \$50 million or more must file their Form 1120 or Form 1120S returns electronically for taxable years ending on or after December 31, 2005. The temporary regulations also require that tax exempt organizations with assets of \$100 million or more that are required to file returns under section 6033 and that meet the 250 return threshold file their Form 990 electronically for taxable years ending on or after December 31, 2005. The \$50 million and \$100 million asset thresholds will decrease to \$10 million for taxable years ending on or after December 31, 2006.

The temporary regulations further require private foundations or section 4947(a)(1) trusts (regardless of asset size) that are required to file returns under section 6033 and

that meet the 250 return threshold, to file their Form 990-PF electronically for taxable years ending on or after December 31, 2006.

### **Exclusions from the e-File Requirement**

Temporary regulations sections 301.6011-5T, 301.6033-4T, and 301.6037-2T and IRS publications provide for exceptions and hardship waivers from the electronic filing requirement for corporations, organizations required to file returns under section 6033, and electing small business corporations. IRS Publication 4163, Modernized e-File (MeF) Information for Authorized IRS *e-file* Providers of Forms 1120/1120S, and IRS Publication 4206, Information for Authorized IRS *e-file* Providers of Exempt Organization Filings, contain instructions for filing corporate and tax exempt organization returns electronically, and exclude certain types of returns from the electronic filing requirement. For example, for tax year 2005, the Service has excluded amended returns from the electronic filing requirement. The Service, however, will accept amended returns through the Modernized e-File (MeF) program effective January 2007. For a complete and up to date list of the exclusions or for further information on electronic filing, refer to Publication 4163, Publication 4206, and the IRS.gov Internet site. The Service will post answers to frequently-asked questions on this site.

### **Timely Filing of Rejected e-Filed Returns**

If the portion of a return required to be filed electronically is transmitted on or before the due date (including extensions) and is ultimately rejected, but the electronic return originator and the taxpayer comply with the following requirements for timely submission of the return, the return will be considered timely filed and any elections attached to the return will be considered valid. For taxable years ending on or after December 31, 2005, the Service will allow the taxpayer 20 calendar days from the date of first transmission to perfect the return for electronic resubmission.

If the electronic return cannot be accepted for processing electronically, the taxpayer must file a paper return with the Service Center where it would normally be filed. In order for the paper return to be considered timely, it must be filed by the later of the due date, or 5 calendar days after the date the Service last gives notification to the taxpayer that the return has been rejected, as long as the first transmission was made on or before the due date of the return (including extensions). The paper return should include an explanation of why the return is being filed after the due date and include a copy of the Service's final rejection notification. A paper return filed in accordance with this paragraph will be considered timely filed and any elections attached to the return will be considered valid. A waiver request does not have to be filed by the taxpayer under the perfection procedures described in this paragraph.

## **Requests for Waiver of Electronic Filing Requirement**

When certain taxpayers required to file over 250 returns fail to file electronically as required, those taxpayers may be liable for failure to file penalties under I.R.C. §§ 6651 or 6652, unless the taxpayer can establish that the failure to file the return electronically was due to reasonable cause and not due to willful neglect. The temporary regulations permit the Service to waive the electronic filing requirement if the taxpayer demonstrates that undue hardship would result if it were required to file its return electronically. The regulations require that taxpayers seeking a waiver should request that waiver in the manner prescribed in applicable revenue procedures or publications.

The Service will approve or deny requests for a waiver of the electronic filing requirement based on each taxpayer's particular facts and circumstances. In determining whether to approve or deny a waiver request, the Service will consider the taxpayer's ability to timely file its return electronically without incurring an undue economic hardship. The Service will generally grant waivers for filing returns electronically where the taxpayer can demonstrate the undue hardship that would result by complying with the electronic filing requirement, including any incremental costs to the filer. Mindful of the software and technological issues in filing electronically, the Service will also generally grant waivers for filing returns electronically where technology issues prevent the taxpayer from filing its return electronically. Guidance on situations in which deviations or exclusions from the electronic filing requirement can be made without a waiver request (*e.g.*, amended returns) is available in IRS Publication 4163, IRS Publication 4206, and on the IRS.gov Internet site.

## **Elements of a Waiver Request**

To request a waiver, the taxpayer must file a written request containing the following information:

- (1) A notation at the top of the request stating, in large letters, "Form 1120 e-File Waiver Request," "Form 1120S e-File Waiver Request," "Form 990 e-File Waiver Request," or "Form 990-PF e-File Waiver Request."
- (2) The taxpayer's name, federal tax identification number, and mailing address..
- (3) The type of form for which the waiver is requested.
- (4) The taxable year for which the waiver is requested.
- (5) The value of the taxpayer's total assets at the end of the taxable year as reported (or to be reported) on the entity's Form 1120, 1120S, 990, or 990-PF.
- (6) A detailed statement which lists:

a) the steps the taxpayer has taken in an attempt to meet its requirement to timely file its return electronically,

b) why the steps were unsuccessful,

c) the undue hardship that would result by complying with the electronic filing requirement, including any incremental costs to the taxpayer of complying with the electronic filing requirements. Incremental costs are those costs that are above and beyond the costs to file on paper. The incremental costs must be supported by a detailed computation. The detailed computation must include a schedule detailing the costs to file on paper and the costs to file electronically.

(7) A statement as to what steps the taxpayer will take to assure its ability to file future returns electronically.

(8) A statement (signed by an officer authorized to sign the return, as defined in section 6062 of the Code) with the following language:

Under penalties of perjury, I declare that the information contained in this waiver request is true, correct and complete to the best of my knowledge and belief.

Requests from the taxpayer's tax advisor/preparer must include a valid power of attorney.

The waiver request should not be attached to the taxpayer's paper tax return. Extension requests or payments should not be submitted with the waiver request.

### **Time for Filing a Waiver Request**

Taxpayers are encouraged to file electronic filing waiver requests for failure to file a return electronically at least 45 days prior to the due date of the return, including extensions. This will give the Service time to process the waiver request.

### **Place for Filing a Waiver Request**

Until the Service issues further guidance, taxpayers should file a waiver request with the Ogden Submission Processing Center.

Use the following address if using the U.S. Postal Service:

Internal Revenue Service

Ogden Submission Processing Center

Attn: Forms 1120 and 990 e-file Waiver Request, Stop 1057

Ogden, UT 84201

Use the following address if using an overnight delivery service:

Internal Revenue Service

Ogden Submission Processing Center

Attn: Forms 1120 and 990 e-file Waiver Request, Stop 1057

1973 N. Rulon White Blvd.

Ogden, UT 84404

Taxpayers may also fax the waiver request to the following number: (801) 620-7622.

Corporate taxpayers may email questions about e-file to: [largecorporate@irs.gov](mailto:largecorporate@irs.gov).

Software developers and vendors may email questions about corporate e-file to:

[1120@irs.gov](mailto:1120@irs.gov).

Further information is available on the E-file for Charities and Nonprofits webpage at the IRS.gov Internet site.

The principal author of this announcement is Michael Hara of the Office of Associate Chief Counsel (Procedure & Administration). For questions concerning a request for waiver, you may contact the Ogden Service Center by calling 1-866-255-0654 and then selecting option 1, then 2, and then 5.