

Publications

IRS Provides An “Electric Shock” By Lowering Mandatory Electronic Filing Threshold

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Aminkamin@groom.com

202-861-2604

David Blockdblock@groom.com

202-861-5427

Elizabeth Thomas Doldedold@groom.com

202-861-5406

Ellen Goodwinegoodwin@groom.com

202-861-6630

Malcolm Sleemslee@groom.com

202-861-6337

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On February 23, 2023, the IRS published [final regulations \(the “Final Rule”\)](#) that materially expand which reporting entities must file electronically rather than on paper. These requirements apply to a number of tax returns, including Forms W-2, 1099, 1094-B/C and 1095-B/C, 5330, and 5500. Beginning with 2023 year reporting (that is due in 2024), all entities that have to file 10 or more such returns will be required to do so electronically, a significant change from the current threshold of 250 returns. The Final Rule also provides aggregation rules with certain returns to calculate the 10 return threshold.

Background

Previously, under Code section 6011(e), the IRS was prohibited from requiring the electronic filing of returns unless the filer was required to file at least 250 returns during the calendar year. The Department of Treasury (“Treasury”) and the IRS issued regulations that required a person to file information returns electronically if that person was required to file 250 or more information returns in a calendar year, applied separately to each type of information return.

The Taxpayers First Act, enacted on July 1, 2019, authorized the IRS to issue regulations that would decrease this threshold from 250 to 10. *See* our previous alert [here](#) on the Taxpayers First Act. The Final Rule was preceded by proposed regulations issued in July 2021.

Specified Information Returns

Under the Final Rule, filers of at least 10 specified information returns are required to file those returns electronically. Notably, filers are now also required to aggregate specified information returns together to determine whether they meet the 10 return threshold.

GROOM INSIGHT: Many plan sponsors, employers, and other filers not currently subject to mandatory electronic filing will be ensnared by the new regulations and be required to file returns electronically. The new aggregation rules, coupled with the dramatically lower 10-return threshold, will make it difficult for most filers to avoid mandatory electronic filing of many returns.

Specified information returns subject to the Final Rule include:

- Form W-2, *Wage and Tax Statement*
- Form 1094-B, *Transmittal of Health Coverage Information Returns*
- Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*
- Form 1095-B, *Health Coverage*
- Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*
- Form 1099 series (including 1099-MISC, 1099-NEC, 1099-R, 1099-SA, 1099-LTC, and 1099-QA)
- Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b)*
- Form 3922, *Transfer of Stock Acquired Through An Employee Stock Purchase Plan Under Section 423(c)*
- Form 5498 series (including Form 5498-SA and Form 5498-QA)
- Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*
- Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*

The Final Rule also provides that if a filer is required to file the original information return electronically, that filer must file any corrected information return electronically.

GROOM INSIGHT: Many smaller employers that have been filing Forms 1094-C and 1095-C on paper will now need to file the Forms electronically. This is a dramatic change for these employers because filing with the IRS' AIR System is complex, and typically, employers have to contract with third party services providers to do so. This will likely increase the cost and time it will take these employers to file their Forms. While the Preamble notes that the IRS expects to attempt to reduce administrative costs by releasing the Information Returns Intake System ("IRIS") Taxpayer Portal, it is unclear how effective this portal will be. Because the Final Rule is effective for Forms due in 2024 reporting 2023 information, employers should take action now to start contracting with a service provider.

Other Returns

The Final Rule also subjects certain other returns, such as Forms 5330, 5500-EZ, and 8955-SSA and certain tax returns (e.g., Forms 1120 and 1065) to the 10 return threshold. The Final Rule provides a broader aggregation rule for these returns, and requires electronic filing if the filer is required to file 10 or more of certain other returns (including the information returns above, income tax returns, employment tax returns, and excise tax returns). The aggregation rules can be confusing. For example, if a filer was required to file 9 Forms W-2 and 1 Form 8955-SSA, the filer is not required to file the Forms W-2 electronically (because the aggregation rules for specified information returns only take into account other specified information returns), but is required to file the Form 8955-SSA electronically (because the aggregation rules for Form 8955-SSA take into account all returns).

Importantly, certain returns for tax-exempt entities, including Forms 990, 990-EZ, 990-PF, 990-T, and 4270, are already required to be electronically filed, so the Final Rule does not apply to them. In addition, the ERISA-covered plans must file Forms 5500 and 5500-SF to satisfy reporting requirements under both ERISA and the Code, and DOL regulations already require the Form 5500 and Form 5500-SF to be filed electronically.

The Form 5500-EZ for a deferred compensation plan that covers a business owner (a return required to be filed under Code section 6058) is subject to an additional aggregation rule. Under that rule, if the filer is a member of a controlled group of corporations within

the meaning of the aggregation rules under Code sections 414(b), (m), and (o), this 10 return threshold is calculated by aggregating the returns filed by all members of the controlled group.

GROOM INSIGHT: In most cases, a filer can get a waiver from electronic filing based on undue hardship. The Preamble notes that Forms 5500 and 5500-SF are typically ineligible for waivers for undue hardship since these forms are already required to be filed electronically through DOL's EFAST2 system.

Next Steps

The new rules are complex and will require a number of filers to electronically file for the first time in calendar year 2024. Please contact your Groom attorney with any questions, and we would be happy to discuss these issues with you further.