

## **E-FILING MANDATE FOR CERTAIN INFORMATION RETURNS: NEW PROPOSED REGULATIONS**

AUGUST 2021

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New proposed regulations released July 21, 2021 clarify amendments made by the Taxpayer First Act of 2019 (TFA) that reduce the aggregate number of information returns that would trigger the mandatory electronic filing requirement from 250 to 100 for returns required to be filed in 2022, and then to 10 returns for processing years after 2022.

The TFA, signed into law on July 1, 2019, authorizes the Secretary of the Treasury to prescribe regulations that decrease the number of returns a taxpayer may file without being required to file electronically.

The proposed regulations also add a new section to the existing regulations to clarify that partnerships with more than 100 partners must file their information returns electronically, regardless of the number of information returns being filed.

The TFA also requires that any organization required to file a return under Internal Revenue Code (IRC) Section 6033--exempt organizations--must file Forms 990 and 990-T in electronic form.

The TFA amended IRC Section 6011(e), changing the statutory 250-return threshold to a decreasing number over several years. The proposed regulations now confirm that the phase-in period for the reduction of the threshold for electronic filing of certain information returns from 250 to 100 would apply for returns required to be filed during calendar year 2022 (tax year 2021 returns, for example) and from 100 to 10, for return required to be filed during calendar years after 2022.

Consequently, persons required to file at least 10 information returns during calendar year 2023 would be required to file those returns electronically. The IRS is requesting comments on why persons required to file at least 10 information returns during calendar year 2023 would be unable to file those returns electronically during that calendar year, and whether the IRS and Treasury should delay the step-down from 100 to 10 information returns for one more year.

Under current regulations, each type of information return covered by the regulations is considered separately for purposes of determining whether a person meets the 250-return electronic-filing threshold. The proposed regulations would remove the non-aggregation rule, so that a person required to file original information returns of any type covered by Treas. Reg.

§301.6011-2(b)(1) and (b)(2) must count all those returns together to determine whether the person meets or exceeds the electronic-filing threshold for the relevant calendar year. The information returns in question generally include all Forms 1042, 1094, 1095, 1098, 5498, 8027 and W-2 information returns. Conversely, the proposed regulations do not include Forms 8300 in the aggregation rule.

Even though these are proposed regulations that do not have the force of law until they are published in final form, many of the provisions contained in the proposed regulations are codified in the tax law. Moreover, there is no reason to assume that the IRS will delay the step-down implementation dates of the e-filing mandate in the TFA and later laws.