

Notice 2022-36

SECTION 1. PURPOSE

This notice provides relief for certain taxpayers from certain failure to file penalties and certain international information return (IIR) penalties with respect to tax returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022. This notice also provides relief from certain information return penalties with respect to taxable year 2019 returns that were filed on or before

August 1, 2020, and with respect to taxable year 2020 returns that were filed on or before August 1, 2021. The relevant penalties will be waived or, to the extent previously assessed, abated, refunded, or credited, as described in section 3.A of this notice. Situations where penalty relief does not apply are described in section 3.B of this notice.

SECTION 2. BACKGROUND

Section 6651(a)(1) of the Internal Revenue Code (Code) generally imposes an addition to tax for a failure to file (on or before the date prescribed) a tax return that is required under the authority of subchapter A of chapter 61 (other than part III regarding information returns) of the Code, including certain income tax returns.¹

Section 6038 generally imposes a penalty for the failure of certain United States persons to furnish (on or before the date prescribed) certain information with respect to a controlled foreign corporation or a controlled foreign partnership that the person owns.

Section 6038A(d) imposes a penalty on a “25-percent foreign-owned” domestic corporation or wholly foreign-owned domestic disregarded entity for the failure to furnish (on or before the date prescribed) certain information or the failure to maintain certain records.

Section 6038C(c) imposes a penalty on a foreign corporation engaged in a U.S. trade or business for the failure to furnish (on or before the date prescribed) certain information or the failure to maintain certain records.

Section 6039F(c) imposes a penalty on a United States person for the failure to furnish (on or before the date prescribed) certain information with respect to the receipt of large gifts or bequests from foreign persons.

Section 6677 generally imposes a penalty on a United States person for the failure to file (on or before the date prescribed) a

notice or return required by section 6048 with respect to transactions with, or ownership of, a foreign trust.

Section 6698(a)(1) generally imposes a penalty for the failure of any partnership to file (on or before the date prescribed) the return required under section 6031. Section 6698(a)(2) generally imposes a penalty for filing a return that fails to show the information required under section 6031.

Section 6699(a)(1) generally imposes a penalty for the failure of any S corporation (as defined in section 1361(a)(1)) to file (on or before the date prescribed) a return required under section 6037. Section 6699(a)(2) generally imposes a penalty for filing a return that fails to show the information required under section 6037.

Section 6721(a)(2)(A) generally imposes a penalty for the failure to file an information return (as defined in section 6724(d)(1)) on or before the required filing date.

The foregoing penalties do not apply if the taxpayer can show that the failure to timely file the return or to furnish the required information or to provide the required notice, as applicable, is due to reasonable cause. See §§ 6651(a)(1), 6038(c)(4)(B), 6038A(d)(3), 6038C(c), 6039F(c)(2), 6677(d), 6698(a) flush language, 6699(a) flush language, and 6724(a).

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration).² The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” In response, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued a series of notices and other guidance to provide relief to affected

taxpayers. In particular, Notice 2020-17, 2020-15 I.R.B. 590, postponed the due date for certain Federal income tax payments from April 15, 2020, until July 15, 2020. Notice 2020-18, 2020-15 I.R.B. 590, superseded Notice 2020-17 and provided expanded relief postponing the due date for filing Federal income tax returns that were originally due on April 15, 2020, to July 15, 2020, among other things. Notice 2021-21, 2021-15 I.R.B. 986, postponed the due date for filing Federal income tax returns in the Form 1040 series and making certain Federal income tax payments that were originally due on April 15, 2021, to May 17, 2021.

Additions to tax or penalties for failure to timely file returns continued to accrue for taxpayers who did not file by the postponed due dates.

The COVID-19 pandemic has also had an unprecedented effect on the IRS's personnel and operations. The agency was called upon to support emergency relief for taxpayers, such as distributing economic impact payments,³ while sustaining its regular operations in a pandemic environment with limited resources, where employees were sometimes unable to be physically present to process tax returns and correspondence. In response to these challenges, the IRS has been working aggressively to process backlogged returns and taxpayer correspondence to return to normal operations for the 2023 filing season. The Treasury Department and the IRS have determined that the penalty relief described in this notice will allow the IRS to focus its resources more effectively, as well as provide relief to taxpayers affected by the COVID-19 pandemic.

SECTION 3. GRANT OF RELIEF

A. Waiver and Abatement of Certain Penalties for Taxpayers

The IRS will not impose the penalties listed in section 3.A.(1) through (4) of this notice with respect to the specified tax returns for

taxable years 2019 and 2020 that are filed on or before September 30, 2022. The penalties listed in this section 3.A of this notice will be automatically abated, refunded, or credited, as appropriate without any need for taxpayers to request this relief.

(1) Additions to tax under section 6651(a)(1) for failure to file the following income tax returns:

- Form 1040, *U.S. Individual Income Tax Return*; Form 1040-C, *U.S. Departing Alien Income Tax Return*; Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*; Form 1040-NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*; Form 1040 (PR), *Federal Self-Employment Contribution Statement for Residents of Puerto Rico*; Form 1040-SR, *U.S. Tax Return for Seniors*; and Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*;
- Form 1041, *U.S. Income Tax Return for Estates and Trusts*; Form 1041-N, *U.S. Income Tax Return for Electing Alaska Native Settlement Trusts*; and Form 1041-QFT, *U.S. Income Tax Return for Qualified Funeral Trusts*;
- Form 1120, *U.S. Corporation Income Tax Return*; Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*; Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*; Form 1120-FSC, *U.S. Income Tax Return of a Foreign Sales Corporation*; Form 1120-H, *U.S. Income Tax Return for Homeowners Associations*; Form 1120-L, *U.S. Life Insurance Company Income Tax Return*; Form 1120-ND, *Return for Nuclear Decommissioning Funds and Certain Related Persons*; Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*; Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*; Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*; Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*; and Form 1120-SF, *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*;

- Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*; and
- Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*; and Form 990-T, *Exempt Organization Business Income Tax Return (and Proxy Tax Under Section 6033(e))*.

(2) Certain penalties under sections 6038, 6038A, 6038C, 6039F and 6677 for failure to timely file the following IIRs:

- Penalties systematically assessed when a Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, and/or Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, is attached to a late-filed Form 1120 or Form 1065; and
- Penalties assessed by the campus assessment program with respect to filings on Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and on Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b))*.

(3) Penalties under section 6698(a)(1) for failure to timely file and under section 6698(a)(2) for failure to show the required information on a Form 1065, *U.S. Return of Partnership Income*.

(4) Penalties under section 6699(a)(1) for failure to timely file and under section 6699(a)(2) for failure to show the required information on a Form 1120-S, *U.S. Income Tax Return for an S corporation*.

In addition, the IRS will not impose the penalties under section 6721(a)(2)(A) for failure to timely file any information return (as defined in section 6724(d)(1)) that meets the following criteria:

- 2019 returns that were filed on or before August 1, 2020, with an original due date of January 31, 2020; February 28, 2020 (if filed on paper) or March 31, 2020 (if filed electronically); or March 15, 2020;

or

- 2020 returns that were filed on or before August 1, 2021, with an original due date of January 31, 2021; February 28, 2021 (if filed on paper) or March 31, 2021 (if filed electronically); or March 15, 2021.

B. Exceptions

The penalty relief described in this notice does not apply to any penalties that are not specifically listed in the grant of relief under section 3.A of this notice. In addition, the penalty relief described in section 3.A of this notice is not available with respect to any return to which the penalty for fraudulent failure to file under section 6651(f) or the penalty for fraud under section 6663 applies. The penalty relief described in this notice also does not apply to any penalties in an accepted offer in compromise under section 7122 because acceptance of the offer conclusively settled all of the liabilities in the offer under § 301.7122-1(e)(5) of the Procedure and Administration Regulations. The penalty relief described in this notice does not apply to any penalty settled in a closing agreement under section 7121 or finally determined in a judicial proceeding.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Han Huang of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Ms. Huang at (202) 317-6844 (not a toll-free number).

¹ Unless otherwise stated, all “section” references are to provisions of the Code.

² <https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.

³ The IRS, in coordination with the Bureau of the Fiscal Service, issued more than 476.1 million payments through three rounds of

economic impact payments, totaling more than \$814.4 billion during 2020 and 2021. IRS Data Book, 2021, Publication 55-B.