

Eye on Washington Regulatory Update

IRS Dramatically Expands Electronic Filing Mandate in 2024

The Internal Revenue Service (IRS) released final regulations on February 21, 2023 requiring organizations to electronically file specified returns and other documents. [TD 9972](#) affects virtually all organizations that are required to file returns to the IRS, including filers of employment tax returns and information returns, such as Forms 1099-series, Forms W-2, and Affordable Care Act Forms 1094 and 1095-C, among others.

The regulations implement Section 2301 of the Taxpayer First Act (TFA), Public Law 116-25 (enacted July 1, 2019), which generally reduced the number of returns that can be filed in paper form. The final rules substantially modify and expand the proposed electronic-filing rules (REG-102951-16, July 23, 2021).

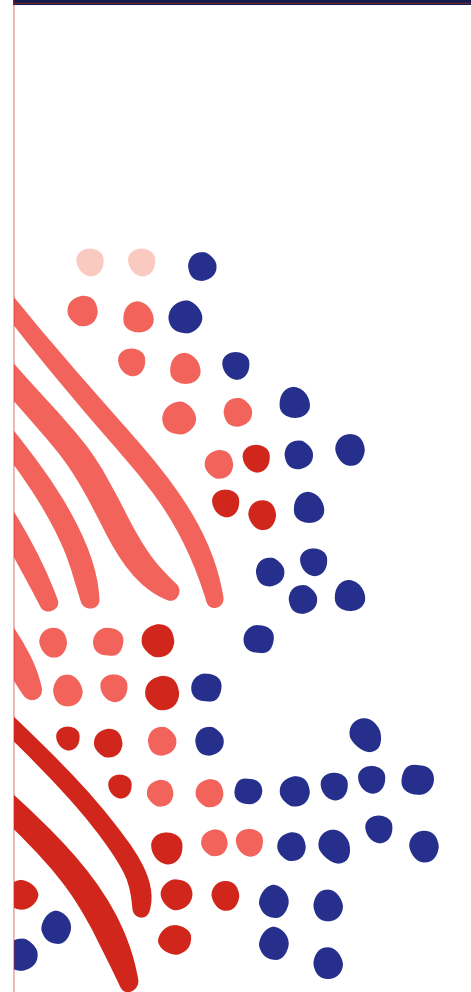
Organizations filing 10 or more IRS returns of any kind in aggregate will need to file almost all required returns electronically.

Generally, an organization filing 10 or more returns or statements (previously more than 250) in a calendar year will be required to file electronically in 2024. The regulations also require e-filing of certain returns and other documents not previously required to be e-filed. Returns affected by the electronic filing mandate include partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns for U.S. Source Income of Foreign Persons, information returns, registration statements, disclosure statements, notifications, actuarial reports, and certain excise tax returns, among others. However, the ten-return threshold does not make electronic filing mandatory for employment tax returns, such as Forms 940 and 941.

Filers must aggregate almost all return types covered by the regulation to determine whether a filer meets the 10-return threshold.

Earlier regulations applied the 250-return threshold separately to each type of information return covered by the regulations. For example, under the prior rule, an organization filing 200 Forms W-2 and 200 Forms 1099 were previously not required to electronically file, since each return type did not separately exceed the 250-return threshold.

Under the new aggregation rule, the number of Forms W-2 and 1099 would be combined to determine whether the threshold is met. The final regulations require filers to aggregate across return types to determine whether a filer meets the 10-return threshold and is thus required to file electronically. This includes Forms 1042-S, 1094-series, 1095-B, 1095-C, 1097-BTC, 1098, 1098-C, 1098-E, 1098-Q, 1098-T, all 1099 series, Forms 3921, 3922, 5498-series, 8027, and W-2G, as well as Forms W-2 (Wage and Tax Statement) and



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variations for U.S. territories such as Forms 499R-2/W-2PR (Withholding Statement (Puerto Rico)) and Form W-2VI (Virgin Islands Wage and Tax Statement). Examples provided in the final regulation follow:

Example 1

Company W is required to file five Forms 1099-INT (Interest Income) and five Forms 1099-DIV (Dividends and Distributions), for a total of 10 returns. Because Company W is required to file 10 returns, Company W must file all its 2023 Forms 1099-INT and 1099-DIV electronically.

Example 2

In 2023, Corporation S, an electing small business corporation, is required to file one 2022 Form 1120-S (U.S. Income Tax Return for an S Corporation), two Forms W-2 (Wage and Tax Statement), two Forms 1099-DIV (Dividends and Distributions), one Form 940 (Employer's Annual Federal Unemployment (FUTA) Tax Return), and four Forms 941 (Employer's Quarterly Federal Tax Return). Because S is required to file 10 returns during the calendar year 2023, S is required to file its 2023 Form 1120-S electronically.

Applicable for returns required to be filed in 2024.

The electronic-filing threshold for returns required to be filed in calendar years 2022 and 2023 remains at 250. The final regulations adopt the electronic-filing threshold of 10 for returns required to be filed on or after January 1, 2024.

Corrected information returns must be filed in the same manner as originals.

If a person is required to file original information returns electronically, any corresponding corrected information returns must also be filed electronically. If a person is permitted to file information returns on paper and files such returns on paper, any corresponding corrected information returns must be filed in paper form.

Exceptions generally provide that if the IRS does not support electronic filing of a particular return, electronic filing would

not be required. For example, if an employer is filing a final Form 941 return in mid-year, expedited filing of Forms W-2 is generally required. However, because the Social Security Administration's systems may not support electronic filing of the current-year Form W-2 until late in the year, such returns will not be required to be filed electronically.

Penalties for failing to file information returns electronically are significant.

Penalties under IRC Section 6721 may apply for non-electronic filing of information returns (e.g., Forms W-2, 1099-series, etc.) when electronic filing is required. Such penalties may also apply for non-filing, late filing or incorrect information. The potential penalty in 2022 is up to \$290 per Form W-2, up to an annual maximum of \$3,532,500. For businesses with annual gross receipts of less than \$5 million, the maximum is \$1,117,500. Penalty amounts are indexed and change annually.

Hardship waivers may be available for filers that would experience hardship in complying with the e-filing requirements. To further facilitate compliance, the IRS recently released a new [online portal](#) to help businesses file Form 1099 series information returns electronically. Known as the Information Returns Intake System (IRIS), this free electronic-filing service is secure, accurate and requires no special software. Though available to any business of any size, IRIS may be especially helpful to small businesses that currently file Forms 1099 on paper to the IRS.

The IRS explained that the electronic filing mandate is necessary because the agency receives nearly four billion information returns per year. In 2019, the IRS still received nearly 40 million paper information returns, even though approximately 99% of all information returns for that year were e-filed. The IRS also noted that electronic filing has become more common, accessible, and economical, as evidenced by the prevalence of return preparers and service providers who offer electronic-filing services; by the availability of relevant software, and by the numbers of returns already being filed electronically on a voluntary basis.

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For Tax-Filing clients, ADP automatically files all returns electronically that can be filed electronically, without regard to threshold, for improved accuracy and efficiency. Affected organizations should consult appropriate legal or tax advisors and consider software changes to comply with the new requirements.

For additional information, see the final regulation (TD 9972) at <https://www.federalregister.gov/public-inspection/2023-03710/electronic-filing-requirements-for-specified-returns-and-other-documents>.

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at www.adp.com/regulatorynews.

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