



## ALERT – IRS Provides Penalty Relief for Certain Taxpayers

By Mary Lundstedt, Esq. & Eli Noff, Esq., CPA

### EXECUTIVE SUMMARY:

The IRS is providing broad-based penalty relief by automatically removing failure-to-file penalties for 2019 and 2020 returns. Taxpayers who already paid such penalties, will either receive a refund or see the resulting overpayment applied to offset other liabilities.

Generally, this relief applies to the following returns, if filed by September 30, 2022:

The majority of Form 1040 and 1120 series returns

Forms 1041, 1065, 1066, and 990-T, and 990-PF

Certain Information Returns in the 1099 series

International information returns (Forms 5471, 5472, 3520, and 3520-A) attached to applicable federal income tax returns and assessed a penalty at filing

Exceptions from Notice 2022-36 penalty relief:

Penalties not listed in the Notice

Returns to which the IRC §6651(f) fraudulent failure to file penalty or the IRC §6663 penalty for fraud applies

Any penalties in an accepted offer in compromise under IRC §7122

Any penalty settled in a IRC §7121 closing agreement or finally determined in a judicial proceeding





Note: At the time of this writing, Notice 2022-36 is widely considered as ambiguous regarding (1) who is eligible for late-filed international information returns relief and (2) which specific international information returns are implicated. While the Notice expressly states that penalty relief is available for Forms 5471 and 5472 attached to a late filed Form 1120 or 1065, it fails to clarify if relief is available for the entire Form 1120 series filers, and it omits any mention of Forms 5471 and 5472 attached to late-filed Forms 1040 and 1041.

### **IRS Provides Automatic Penalty Relief for Certain Taxpayers Filing Income and Information Returns for Tax Years 2019 and 2020**

On August 24, 2022, the IRS issued Notice 2022-36,<sup>1</sup> providing broad-based penalty relief “to most people and businesses who file certain 2019 or 2020 returns late.”<sup>2</sup> Significantly, this includes both tax and information returns and is projected to automatically provide approximately \$1.2 billion in refunds or credits to an estimated 1.6 million taxpayers. The IRS explained in its accompanying news release, IR-2022-155, that:

Besides providing relief to both individuals and businesses impacted by the pandemic, this step is designed to allow the IRS to focus its resources on processing backlogged tax returns and taxpayer correspondence to help return to normal operations for the 2023 filing season.

This penalty relief program officially commenced August 25, 2022,<sup>3</sup> and we want to share the good news here and now so readers understand—and are prepared for—an IRS action that millions will welcome. According to the Taxpayer Advocate Service, “Notices and refunds are being initiated now and many of the refunds will be completed by the end of September.”<sup>4</sup>

### **Which Penalties are Waived/Abated?**

With respect to the specified tax returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022, the penalties outlined below will “be automatically abated, refunded, or credited, as appropriate without any need for taxpayers to request this relief.”<sup>5</sup>

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

A. In the Form 1040 series: 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; Form 1040-SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico);

B. In the Form 1041 series: 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; Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts;

C. In the Form 1120 series: 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 );

D. Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return; and

E. 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)).

Certain penalties under IRC §§6038, 6038A, 6038C, 6039F, and 6677 for failure to timely file the following international information returns (IIRs):

A. 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

B. 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)).

\*Note, any IIR penalties subsequently determined during an IRS

examination are excluded from this relief.

Penalties under IRC §6698(a)(1) for failure to timely file and under section IRC §6698(a)(2) for failure to show the required information on a Form 1065, U.S. Return of Partnership Income. Penalties under IRC §6699(a)(1) for failure to timely file and under IRC §6699(a)(2) for failure to show the required information on a Form 1120-S, U.S. Income Tax Return for an S corporation.

The IRS also stated that it is providing similar relief to “banks, employers and other businesses required to file various information returns, such as those in the 1099 series,” relieving them of IRC §6721(a)(2)(A) penalties for failure to timely file any information return (as defined in IRC §6724(d)(1)) that satisfies 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.

\*Note that the IRS clarified in its news release, IR-2022-155, that:

Because both of these deadlines fell on a weekend, a 2019 return will still be considered timely for purposes of relief provided under the notice if it was filed by August 3, 2020, and a 2020 return will be considered timely for purposes of relief provided under the notice if it was filed by August 2, 2021. The







notice provides details on the information returns that are eligible for relief.

Again, the penalties outlined above do not require taxpayer action; instead, these penalties will be automatically abated, refunded, or credited, as appropriate. Moreover, as indicated in the IRS news release, many taxpayers who have already paid such penalties will receive refunds (or have the amount applied to offset an existing liability) by the end of September 2022.

### **What is Excluded from the Notice 2022-36 Relief Program?**

Notice 2022-36 penalty relief does not apply to:

Penalties that are not specifically listed in Notice 2022-36

Any return to which the penalty for fraudulent failure to file under IRC §6651(f) or the penalty for fraud under IRC §6663 applies

Any penalties in an accepted offer in compromise under IRC §7122 because offer acceptance conclusively settled all of the liabilities in the offer under section 301.7122-1(e)(5) of the Procedure and Administration Regulations

Any penalty settled in a closing agreement under IRC §7121 or finally determined in a judicial proceeding

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