



American Payroll Association

Government Relations • Washington, DC

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Internal Revenue Service
CC:PA:LPD:PR (REG-132075-14)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Portal: www.regulations.gov (IRS REG-132075-14)

Re: Notice of Proposed Rulemaking: Extension of Time to File Certain Information Returns
REG-132075-14, RIN 1545-BM49, 80 *Fed. Reg.* 48472 (August 13, 2015)

Dear IRS Staff:

The American Payroll Association appreciates the opportunity to comment on the Internal Revenue Service's Notice of Proposed Rulemaking regarding the removal of automatic filing extensions for certain information returns, including forms in the W-2 series, 1097 series, 5498 series, or Forms 1042-S, 1094-C, 1095-B, 1095-C, 3921, 3922, or 8027, and the allowance of only one non-automatic extension for filing these forms, collectively referred to in these comments as NPRM forms. We have a joint interest with the IRS to eliminate identity theft and tax refund fraud. However, efforts to fix this problem should not create other problems. The APA prefers that the IRS not eliminate automatic filing extensions, however if the IRS does eliminate these extensions, then other measures should be included to minimize the negative impacts that this approach could create.

ABOUT THE AMERICAN PAYROLL ASSOCIATION

Established in 1982, the APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals and their employers in the United States. The APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. The APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist employers with understanding their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers. The GRTF maintains a close relationship with the IRS to ensure that APA's members receive the latest information about federal tax law changes and that the IRS receives meaningful feedback on its programs, regulations, guidance, and tax forms.

PUBLISHED CRITERIA ARE ESSENTIAL FOR GRANTING NON-AUTOMATIC EXTENSIONS

A common misconception is that when an employer provides Forms W-2 to employees by January 31 that the employer can always provide the Social Security Administration with complete and correct information on the same forms by the end of February (paper) or March (electronic); therefore, additional time for filing is unnecessary. The process is not that simple. Providing a final, completely accurate Form W-2 is dependent on when an employer receives all of the information required for the form. For example, third-party sick and state disability payment information is not due to employers until January 15. Employers have no control over whether this information is provided late or has inaccuracies that must be researched and corrected. Other examples include accounts payable systems and third party vendors that send employers information after year end for nonqualified moving expenses, prizes and awards, value of company travel or employer-provided housing, noncash fringe benefits, and employee reports pertaining to the personal use of a company car, etc. In addition, in today's global business environment, employers hire expatriate U.S. citizens and resident aliens whose payroll information may take longer for employers to obtain.

Employers need a means of relief if a real problem exists without fear of crushing penalties. The regulations should clearly define the criteria that the IRS will use to allow for a non-automatic extension. The IRS explains how to file for an extension, but does not explain when an extension will be granted. The language in the NPRM's "Background and Explanation of Provisions" in the *Federal Register* refers to a grant of extension by the IRS "in its discretion," but this term is vague. The IRS also states that an extension will be granted only "as a result of extraordinary circumstances or catastrophe" such as a natural disaster or fire. The IRS's Internet site includes guidance under a page titled, "Penalty Relief Due to Reasonable Cause,"¹ that offers more reasons for an extension;² however, the NPRM does not reference this guidance and this guidance may change based on this NPRM. Employers need to know what to expect so that they can plan and adjust their processes. Therefore, the criteria upon which a filing extension request will be granted should not be unduly burdensome and should be part of the final regulations.

PENALTIES SHOULD BE REASONABLE

Placing the burden on employers to collect all of the required information in a short time period with the specter of recently increased penalties for late or inaccurate filing and little opportunity for an extension is unfair and unreasonable. Penalties should be designed to encourage compliance and be incentive-based such that they are directly associated with performance targets to make them effective.

¹ <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Penalty-Relief-Due-to-Reasonable-Cause>.

² These reasons include:

- "Death, serious illness, incapacitation or unavoidable absence of the taxpayer or a member of the taxpayer's immediate family;" and
- "Other reason which establishes that you used all ordinary business care and prudence to meet your Federal tax obligations but were nevertheless unable to do so."

Employers already are spending significant resources to prepare the required NPRM forms. The APA is concerned that without an opportunity to obtain an extension, some employers will decide to file timely with inaccurate forms that will be corrected later. This is not in the interest of the IRS, employees, or employers.

PROTECTING THE QUALITY OF THE YEAR-END PROCESS IS ESSENTIAL

Maintaining the year-end reconciliation process is extremely important. This requires employers to keep track of each step taken to balance amounts withheld, deposited, paid, and reported to various federal, state, and local agencies to ensure accurate and consistent records. If out-of-balance conditions are found, they must be reconciled. This process is extremely important for balancing and remitting required taxes and also to ensure that employees receive complete and accurate tax information, allowing them to avoid an additional cost of filing amended returns. The APA is concerned that pressure to shorten the time to file information returns would negatively impact the quality of year-end audits and could put employers in a penalty situation.

Temporary employees cannot be hired to perform year-end duties or to make corrections to information returns to speed the process. These employees will not know the steps the employer has taken during the year and they could make employees and vendors uneasy because they are strangers to the employer-employee and employer-vendor relationships. Temporary employees also pose a security risk.

OTHER MEASURES ARE NECESSARY TO ACCOMPANY THIS PROPOSED RULEMAKING

If the IRS insists on eliminating time to file NPRM forms, other measures should likewise be taken to enhance the program.

Change When Tax Refunds are Issued and Accelerate IRS Access to W-2 Information

The APA understands the importance of getting tax refunds to taxpayers as early as possible after they have filed their income tax returns. In some ways, the IRS has become a forced savings account holder during the year for people who use their refund to pay for basic necessities. The IRS may want to consider issuing refund checks only after an employer has uploaded all of its Forms W-2 to the SSA's *Business Services Online* filing system and the SSA has passed the employer's W-2 file to the IRS.

The IRS has made improvements in its relationship with the SSA in terms of shared information and the SSA recently upgraded its wage reporting system. Consequently, Forms W-2 filed electronically with the SSA should be available to the IRS within a few days.

Increase Electronic Filing

The IRS allows paper filing of Forms W-2 for employers filing fewer than 250 forms. Paper forms must be uploaded by the SSA into that agency's electronic system which, because of the number of paper forms received, takes three times as long as when employers enter the information directly. This time gap

creates an opportunity for fraud because the IRS is likely to issue a refund before the SSA is able to transfer the information. The APA recommends that the IRS mandate electronic filing of all Forms W-2 to eliminate the potential for fraud created by paper filing. At a minimum, the agency should significantly reduce the threshold of the number of forms that triggers electronic filing, e.g., 5 rather than 250. The APA also recommends that the IRS consider mandating electronic filing of all of the NPRM forms although we recognize that some of the forms are new and the process may take longer. At one time, many employers did not have computers or Internet access. This is rarely the case today. The IRS should recognize this fact and take greater advantage of electronic tools.

The APA has enjoyed a strong working relationship with the IRS over many years. Thank you for allowing us to participate in this NPRM. To discuss these comments and recommendations further, please contact Alice Jacobsohn at the APA at 202-248-3901 or ajacobsohn@americanpayroll.org.

Sincerely,

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