



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM **Update #87**

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Proposed IRS Regulations Would Expand Mandatory Electronic Filing of Information Returns

The IRS has released proposed regulations that would significantly expand mandatory electronic filing of most information returns. As background, filers required to file 250 or more information returns during a single calendar year must file electronically, but, under current regulations, the 250-return threshold applies separately to each type of information return. For example, if an employer files 200 Forms W-2 and 100 Forms 1095-C during 2018, the employer is not required to file either form electronically since, considered separately, neither form crosses the 250-return threshold.

The proposed regulations would require aggregation of most information returns when calculating the 250-return threshold, removing the rule that counts the number of information returns separately by form type. Forms that would have to be aggregated include Forms 1095-B and 1095-C, forms in the 1099 series, and Form W-2. In addition, if information returns would have to be filed electronically under the proposed aggregation rule, then any corrected returns would also have to be filed electronically, even if fewer than 250 corrected forms are filed during the calendar year. Note that corrected returns are not added to original returns when calculating the 250-return threshold. The preamble states that significant advances in technology have made electronic filing more prevalent and accessible, noting that approximately 98% of information returns were filed electronically in recent tax years. Thus, although a substantial number of small entities would be affected by the proposed change, the IRS determined that the economic impact would not be significant given the current prevalence of electronic filing. The IRS also points out that its waiver process, under which it waives mandatory electronic filing for filers lacking access to electronic filing at a reasonable cost, would continue to be available. The proposed regulations would be effective for information returns required to be filed, and to corrected returns filed, after December 31, 2018.

The IRS has encouraged electronic filing of information returns for years. In fact, the IRS floated the aggregation rule in 2013 in its proposed regulations on Code §§ 6055 and 6056 reporting under the Affordable Care Act, but ended up adopting the non-aggregation rule in the final regulations. Now, the IRS seems to be shifting from encouragement to compulsion. If finalized, the aggregation rule is likely to mean that only the smallest applicable large employers may continue to file Forms 1095-C on paper. The proposed rule would also apply to Forms 1099-R issued by 401(k) and other qualified retirement plans.

Additional information is available at:

<https://www.federalregister.gov/documents/2018/05/31/2018-11749/filing-requirements-for-information-returns-required-on-magnetic-media-electronically>

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