

IRS Drastically Expands Electronic Filing Requirement for 2023 Tax and Information Returns

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The Internal Revenue Service [finalized regulations](#) on Feb. 23, 2023, significantly expanding mandatory electronic filing of tax and information returns that require almost all returns filed on or after Jan. 1, 2024, to be submitted to the IRS electronically instead of on paper.

Under the new rules, filers of 10 or more returns **of any type** for a calendar year generally will need to file electronically with the IRS. Previously, electronic filing was required if the filing was more than 250 returns **of the same type** for a calendar year.

The discussion below focuses primarily on common workplace IRS information forms, such as Form W-2 and 1099 filings and employee benefit plan filings, but the new rules broadly apply to other types of returns.

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Affected employers may need significant lead time to implement new software, policies and procedures to comply with the new rules. Thus, even though electronic filing is not required until 2024 for the 2023 tax year, employers should evaluate what changes may be needed. Simply doing the “same as last year” will not work for many employers.

General Rules

Who is affected? Practically all IRS filers of 10 or more information returns when counting any type, such as Forms W-2, Forms 1099, Affordable Care Act Forms 1094 and 1095 and Form 3921 (for incentive stock options) and other disclosure documents, are impacted by this change this year — that is, for 2023 returns that will be filed in 2024. Even workplace retirement plans may need to file Form 1099-Rs (for benefit payments) and other forms electronically with the IRS starting in 2024 for the 2023 plan or calendar year.

Which returns are affected? In addition to the information returns that are the primary focus of this article, the new rules cover a broad variety of returns, including partnership returns, corporate income tax returns, unrelated business income tax returns, withholding tax returns for U.S.-source income of foreign persons, registration statements, disclosure statements, notifications, actuarial reports and certain excise tax returns.

The rules are not relaxed under these regulations. Thus, returns that are already required to be filed electronically, including partnership returns with more than 100 partners, tax-exempt organization annual returns in the Form 990 series, Form 4720 (for certain excise taxes) and most Forms 5500 (Annual Return/Report of Employee Benefit Plan) continue to be subject to the electronic filing requirement. However, under the new regulations, any taxpayer with 10 or more returns, including income and information returns, must also file its income tax return electronically.

Under the new rules, filers of 10 or more returns of any type for a calendar year generally will need to file electronically with the IRS.

How to count to 10? A significant change introduced by the new regulations is that the 10-return threshold for mandatory electronic filing is determined on the aggregate number of different types of forms and returns. The aggregation rules are confusing because the filings included in the count change depending on which form the determination is made. Also, some filers must be aggregated with all entities within its controlled or affiliated service group to determine if 10 or more

returns are being filed for the tax year. For instance, Form 5500 employee benefit plan filers (but not Form 8955-SSA employee benefit plan filers) must count the filings of the employer who is the “plan sponsor” and other entities in the employer’s controlled and affiliated service group.

- **Example 1:** Company A is required to file five Forms 1099-INT (Interest Income) and five Forms 1099-DIV (Dividends and Distributions), for a total of 10 information returns. Because Company A is required to file a total of 10 information returns, Company A must file all of its 2023 Forms 1099-INT and 1099-DIV electronically, as well as any other return(s) that are subject to an electronic filing requirement. The reason for this result is that “specified information returns” such as Forms 1099 and W-2 must be aggregated when counting to determine whether the new 10-or-more threshold for electronic filing is met.
- **Example 2:** Company B is required to file nine Forms W-2 and one Form 8955-SSA. Company B is not required to file the Forms W-2 electronically because the aggregation rules for “specified information returns” take into account only other specified information returns that do not include Form 8955-SSA nor the income tax return. But Company B must file the Form 8955-SSA electronically because the aggregation rules for Form 8955-SSA take all returns into account.
- **Example 3:** Corporation X, a C corporation with a fiscal year end of Sept. 30, was required to file one Form 1120 (U.S. Corporation Income Tax Return) during the calendar year ending Dec. 31, 2023, six Forms W-2 (for employees), three Forms 1099-DIV (for dividend distributions), one Form 940 (Employer’s Annual FUTA Tax Return) and four Forms 941 (Employer’s Quarterly Federal Tax Return). Because the Form 1120 aggregation rules include returns of any type during the calendar year that ends with or in the taxable year and Corporation X is required to file more than 10 returns of any type during calendar year 2023, Corporation X is required to file its Form 1120 electronically for its taxable year ending Sept. 30, 2024.

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Any payers that currently file any returns on paper should consult with their tax advisor to determine if the new electronic filing requirements apply to them based on the number of returns that they anticipate filing in 2024 for tax year 2023.

Filers must, for the first time, pay particular attention to the total number of returns across all return types, because the new electronic filing threshold is determined based on the aggregate total, not the number of returns per return type. This might require coordination between different departments within an organization and immediate consultation with the IT department and/or software provider to ensure there is adequate time to implement technology solutions or software upgrades before the 2024 filing deadline.

The IRS’s new — and free — online portal for filing these returns electronically, Information Returns Intake System (IRIS), is especially helpful for small filers dealing with electronic filing for the first time. According to the IRS, IRIS is secure, accurate and does not require any special software. This free service is available to filers of any size.

Retirement and Employee Benefit Plans

How do the new rules apply to retirement and benefit plan filings? Different aggregation rules apply, depending on the type of form being tested for whether electronic filing is required, which can be confusing.

Form 5500. Filers of Form 5500 must file electronically for plan years that begin on or after Jan. 1, 2024, if they **(together with any member of a controlled or affiliated service group)** are required to file at least 10 returns of **any type, including information returns (such as Forms W-2 and Forms 1099), income tax returns, employment tax returns and excise tax returns**, during the calendar year that includes the first day of the plan year. Thus, Form 5500 filers are subject to an **additional controlled group aggregation rule** that does not apply to other types of filings. This means that Form 5500-EZ (plans that cover only the owner or owner and spouse) may need to be filed electronically depending on the number of Forms W-2, Forms 1099, etc. filed by the plan sponsor and affiliated businesses. Most Forms 5500s (but not Form 5500-EZ) are already filed electronically through the U.S. Department of Labor’s EFAST2 filing system.

Form 8955-SSA. Forms 8955-SSA (identifying retirement plan participants who terminated employment but left vested benefits in the plan) that are required to be filed for plan years that begin on or after Jan. 1, 2024, must be electronically filed if the filer is required to file 10 or more returns of any type, including information returns (such as Forms W-2 and Forms 1099), income tax

returns, employment tax returns and excise tax returns, during the calendar year that includes the first day of the plan year. But if the Form 8955-SSA filer is a member of a controlled or affiliated service group, the filer would count only the number of its own returns being filed and would not count the number of returns being filed by others in the group.

Form 5330. Forms 5330 (for certain employee benefit plan excise taxes) required to be filed for tax years ending on or after Dec. 31, 2023, must be filed electronically if the filer is required to file 10 or more returns of any type, including information returns (such as Forms W-2 and Forms 1099), income tax returns, employment tax returns and excise tax returns, during the calendar year in which the Form 5330 is due.

Forms 1094, 1095, 1099 and 5498. Forms 1094 and 1095 series (Affordable Care Act coverage reporting), Form 1099 series (including 1099-R for retirement plan benefit payments) and Form 5498 Series (for IRA contributions) required to be filed after Dec. 31, 2023, must be filed electronically if the filer is required to file 10 or more “specified information returns” during the calendar year that includes the first day of the plan year.

The new mandate is generally effective for 2023 tax year returns that must be filed with the IRS on or after Jan. 1, 2024.

Counting Rules for Each Form. When determining whether a filer for a retirement plan’s Forms 1099-R must file those forms electronically, the filer would count only its “specified information returns” (like Forms W-2, 1099 series, 1094 series and 1095 series). The requirement to include filings by entities in the sponsor’s controlled or affiliated group applies only to electronic filing of the plan’s Form 5500.

- **Example 1:** If a retirement plan filer is required to file eight Forms 1099-R, one Form 5500 and one Form 8955-SSA, the filer is not required to file the Forms 1099-R electronically. However, it is required to file Forms 5500 and 8955-SSA electronically, because all returns, including Forms 1099-R, must be taken into account for determining Forms 5500 and 8955-SSA electronic filing status under the aggregation rules.
- **Example 2:** In 2023, Company A (the plan sponsor and plan administrator of Retirement Plan B) is

required to file a 2023 Form 5330 for its nondeductible contribution to Plan B. Company A and Plan B both operate on a calendar-year basis. In 2024, Company A (as plan administrator) is required to file 21 returns for 2023, including nine 2023 Forms 1099-R (for plan benefit payments), 10 2023 Forms W-2, one 2023 Form 5500 and one 2023 Form 1120 (federal corporate income tax return). Because Company A is required to file at least 10 returns of any type during the 2024 calendar year, Company A must file the 2023 Form 5330 for Plan B electronically.

- **Example 3:** Assume plan sponsor A, who maintains retirement plan B, is required to file one Form 1099-R, one Form 5500 and one Form 8955-SSA. Assume plan sponsor A is not a partnership with 100 or more partners, and is required to file one Form W-2, four Forms 941, one Form 940 and one Form 1120 (federal corporate income tax return). Assume also that plan sponsor A owns 100% of entity C, which files 20 Forms W-2, four Forms 941, one Form 940 and one federal income tax return. The Form 1099-R for the plan and the Form 8955-SSA can be filed on paper (because the controlled and affiliated service group rules do not apply to those filings), but the Form 5500 for the plan must be electronically filed due to the aggregation rules.

What about corrected returns? Generally, if an original return is required to be filed electronically, any corrected return corresponding to that original return must also be filed electronically. If an original return is permitted to be filed on paper and is filed on paper, any corrected return corresponding to that original return must be filed on paper.

Are there any waivers or exemptions? Filers that are required to file fewer than 10 returns during the calendar year when counting all types may use IRS paper forms, but only if the paper form is machine-readable.

In cases of undue hardship, the IRS may waive the mandatory electronic filing requirement. The main factor in determining hardship is the amount, if any, by which the cost of electronic filing exceeds the cost of paper filing. Religious waivers will also be considered. Waiver requests must be made in accordance with applicable IRS revenue procedures and must specify the type of filing and the period to which it applies. Electronic filing is also generally waived if the IRS’s system does not support it for a particular form or situation.

Example: If an employer is required to file a final return on Form 941 (Employer's Quarterly Federal Tax Return), or a variation thereof, and expedited filing of Forms W-2 (or applicable versions for Puerto Rico, the U.S. Virgin Islands, Guam or American Samoa) is required, but the IRS's systems do not support electronic filing, filers will not be required to file electronically.

What are the penalties for noncompliance? A failure to file in the required manner (for example, electronically or on machine-readable paper forms) is considered a failure to file. The penalties differ based on the type of return. For information returns, such as Forms W-2 and Form 1099 series, the penalty under Internal Revenue Code Section 6721 would apply, which is up to \$310 per information return (for 2023 information returns required to be filed in 2024) with an annual maximum penalty of \$3,783,000 (\$1,891,500 for small businesses with annual gross receipts of no more than \$5 million). Penalty amounts are indexed and change annually.

When are the new rules effective? The new mandate is generally effective for 2023 tax year returns that must be filed with the IRS on or after Jan. 1, 2024.

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Even if filers are not required to file electronically under the new rules, they may want to consider doing so, as electronic filing has become more common, accessible and economical. Electronic filing may reduce administrative efforts compared to paper filing, and can increase accuracy and improve record retention.

The new mandatory electronic filing rules are complicated and penalty exposure may be significant.

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