

# TaxNewsFlash

## United States



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## Notice 2022-36: Penalty relief for certain taxpayers filing returns for tax years 2019 and 2020 (COVID-19)

The IRS today released Notice 2022-36 providing relief for certain taxpayers from certain failure to file penalties and certain international information return (IIR) penalties with respect to tax returns for tax years 2019 and 2020 that are filed on or before September 30, 2022.

[\*\*Notice 2022-36\*\*](#) [PDF 130 KB] also provides relief from certain information return penalties with respect to (1) tax year 2019 returns that were filed on or before August 1, 2020; and (2) tax year 2020 returns that were filed on or before August 1, 2021.

The notice states that the IRS has determined that the penalty relief described in the notice will allow the IRS to focus its resources more effectively, as well as provide relief to taxpayers affected by the coronavirus (COVID-19) pandemic.

The IRS also today issued an accompanying release—[\*\*IR-2022-155\*\*](#)—further explaining the background to and reasons for the relief provided. According to the news release, the relief provided by Notice 2022-36 “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.”

In addition, the National Taxpayer Advocate has commented on this relief. Read the [comments](#).

### **Waiver and abatement of certain penalties**

The IRS will not impose the following penalties with respect to the specified tax returns for tax years 2019 and 2020 that are filed on or before September 30, 2022.

#### **Additions to tax under section 6651(a)(1) for failure to file the following income tax returns:**

- Form 1040, *U.S. Individual Income Tax Return* and other forms in the Form 1040 series
- Form 1041, *U.S. Income Tax Return for Estates and Trusts* and other forms in the Form 1041 series
- Returns filed in the Form 1120 series including:
  - 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 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*
- Form 1120-SF, *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*
- Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*
- Forms concerning exempt organizations
  - Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*
  - Form 990-T, *Exempt Organization Business Income Tax Return (and Proxy Tax Under Section 6033(e))*

**Certain penalties under sections 6038, 6038A, 6038C, 6039F and 6677 for failure to timely file international information returns**

- 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
- 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))*

**Penalties under sections 6698 and 6699**

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

These penalties will be automatically abated, refunded, or credited, as appropriate without any need for taxpayers to request this relief. The accompanying news release provides that taxpayers who have already paid eligible penalties will receive refunds or credits, and “many of the [refund] payments will be completed by the end of September.”

The IRS will also not impose the penalties under section 6721(a)(2)(A) for failure to timely file any information return (as defined in section 6724(d)(1)) that meets 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
- 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

**Exceptions**

The penalty relief described in Notice 2022-36:

- Does not apply to any penalties that are not specifically listed in the notice

- Is not available with respect to any return to which the penalty for fraudulent failure to file under section 6651(f) or the penalty for fraud under section 6663 applies
- Does not apply to any penalties in an accepted offer in compromise under section 7122 because acceptance of the offer conclusively settled all of the liabilities in the offer under section 301.7122-1(e)(5) of the Procedure and Administration Regulations
- Does not apply to any penalty settled in a closing agreement under section 7121 or finally determined in a judicial proceeding

#### **KPMG observation**

Tax professionals believe that today's notice is welcome news, but due to the nature of its release, there are open questions regarding—among other things—the exact tax periods to which the general relief applies, and the process(es) for providing the “automatic” penalty abatement relief to taxpayers based on the stage in which a penalty has been imposed upon or may be applicable to a taxpayer. Tax professionals expect additional guidance to be issued by the IRS to provide some clarity to these and other questions.

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