

Current Federal Tax Developments

Week of January 17, 2022

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CURRENT FEDERAL TAX DEVELOPMENTS
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SECTION: 501

FORM 1024 MUST BE FILED ELECTRONICALLY

Citation: Revenue Procedure 2022-08, 1/3/2022

Electronic filing of Form 1024, *Application for Recognition of Exemption Under Section 501(a) or Section 521 of the Internal Revenue Code*, via <https://www.pay.gov> was made mandatory upon the release of Revenue Procedure 2022-08¹ on January 3, 2022. A limited 90-day transition period will allow for some submissions to continue to be submitted on paper forms for a limited time.

The form is filed by the following organizations looking for recognition as a tax-exempt entity:

- Entities described in § 501(a) (other than those described in § 501(c)(3) or § 501(c)(4)) and
- Entities described in § 521 (for organizations seeking a determination letter recognizing exempt status who submit Form 1024 in lieu of filing Form 1028 along with Form 8718)²

The procedure also modifies which individuals or representatives are allowed to sign the Form 1024 to allow more individuals associated with the organization to sign the form, but removes the ability to appoint a representative via a power of attorney to sign the application for the organization.

The procedure summarizes the revised submission process as follows:

The IRS has revised and updated Form 1024 and provided for it to be electronically submitted at www.pay.gov. Organizations seeking determination under section 501(a) (other than those described in § 501(c)(3) or § 501(c)(4) and those seeking group rulings), including those organizations that have been required to submit letter requests to seek their determination (including those described in § 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28) or (29), or under § 501(d) are required to electronically submit the Form 1024 as of the effective date of this revenue procedure, except as provided in section 4. Organizations requesting determination under section 521 may also electronically submit the Form 1024 instead of Form 1028.

¹ Revenue Procedure 2022-08, January 3, 2022, <https://www.irs.gov/pub/irs-drop/rp-22-08.pdf> (retrieved January 16, 2022)

² Revenue Procedure 2022-08, January 3, 2022

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The electronic submission process for Form 1024 replaces the paper submission process for Form 1024 on January 3, 2022, subject to the transition relief provided in section 4 of this revenue procedure. Section 3 of this revenue procedure modifies Rev. Proc. 2022-5 to set forth procedures for issuing determination letters in response to electronically submitted Form 1024 applications. Unless otherwise modified in this revenue procedure, the provisions of Rev. Proc. 2022-5 continue to apply.³

The IRS news release issued at the same time as the notice provides the following additional information:

Organizations requesting determinations under Section 521 are now also able to use the electronic Form 1024 instead of Form 1028, *Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code*.

The required user fee for Form 1024 will remain \$600 for 2022. Applicants must pay the fee through Pay.gov when submitting the form. Payment can be made directly from a bank account or by credit or debit card.⁴

Individuals or Representatives Who Can Sign Form 1024

Under prior guidance, the following individuals or representatives were allowed to sign a Form 1024:

- An officer,
- A trustee who is authorized to sign, or
- A representative authorized by a power of attorney.⁵

Now the list is expanded to include the following additional individuals:

- A director and
- An other official who is authorized to sign for the organization.⁶

³ Revenue Procedure 2022-08, January 3, 2022

⁴ “IRS revises Form 1024, used by most types of organizations to apply for exempt status, to allow electronic filing,” IR-2022-2, January 3, 2022, <https://www.irs.gov/newsroom/irs-revises-form-1024-used-by-most-types-of-organizations-to-apply-for-exempt-status-to-allow-electronic-filing> (retrieved January 16, 2022)

⁵ Revenue Procedure 2022-05, Section 4.02 before modification by Revenue Procedure 2022-08

⁶ Revenue Procedure 2022-08, January 3, 2022

As well, the notice *removes* the option to have a representative authorized under a power of attorney sign Form 1024. The procedure provides:

The signature of a representative authorized by a power of attorney who is not an officer, director, trustee, or other official of the organization will not satisfy the signature requirement for Form 1024.⁷

The notice also directs organizations to “[s]ee the instructions to the form for more information on who may sign the application on behalf of an organization.”⁸

90 Day Transition Relief for Filing Paper Forms

The ruling notes that generally:

“...an organization seeking recognition of tax-exempt status under § 501(a) using Form 1024, including those that previously were required to submit a letter application but are required under section 3.02 to use Form 1024, must electronically submit the form and user fee online at www.pay.gov.”⁹

However, for a short period (90 days after January 3, 2022) the following transition relief applies:

For the 90-day period after the effective date of this revenue procedure, the Internal Revenue Service will accept for processing a completed paper Form 1024 from an organization that previously was required to submit the paper Form 1024 and is now required to submit the electronic Form 1024. For this period, the Service will also accept for processing a letter application from an organization that previously was required to submit a letter request and is now required to submit the electronic Form 1024. The paper Form 1024 or letter application must be accompanied by the correct user fee as described in Rev. Proc. 2022-5 prior to the modifications to the payment of user fees made by this revenue procedure and postmarked on or before the date that is 90 days after the effective date of this revenue procedure.¹⁰

⁷ Revenue Procedure 2022-08, January 3, 2022

⁸ Revenue Procedure 2022-08, January 3, 2022

⁹ Revenue Procedure 2022-08, January 3, 2022

¹⁰ Revenue Procedure 2022-08, January 3, 2022

SECTION: 6011

PRESSURE INCREASES TO IMPOSE A FREEZE OF SOME SORT ON IRS AUTOMATED ACTIONS AGAINST TAXPAYERS

Citation: Letter Re: Relief for Taxpayers for the 2022 Filing Season, *Tax Notes Today Federal*, 1/14/22

A number of tax professional organizations, including the AICPA and NAEA, have sent a joint letter to the IRS calling for the agency to take actions to reduce the burden on taxpayers from the agency's extreme backlog in processing tax returns and dealing with correspondence.¹¹

The organizations signing the letter are:

- American Institute of CPAs (AICPA)
- Latino Tax Pro
- National Association of Black Accountants, Inc. (NABA)
- National Association of Enrolled Agents (NAEA)
- National Association of Tax Professionals (NATP)
- National Conference of CPA Practitioners (NCCPAP)
- National Society of Accountants (NSA)
- National Society of Black Certified Public Accountants, Inc. (NSBCPA)
- National Society of Tax Professionals (NSTP)
- Padgett Business Services
- Prosperity Now

¹¹ Letter Re: Relief for Taxpayers for the 2022 Filing Season, *Tax Notes Today Federal*, January 14, 2022, <https://www.taxnotes.com/tax-notes-today-federal/penalties/organizations-call-taxpayer-relief-filing-season/2022/01/18/7d3bl> (subscription required, retrieved January 15, 2022)

Relief Requested

The letter begins by noting the impact the COVID-19 pandemic has had on the IRS, taxpayers and tax professionals:

The Coronavirus Disease 2019 pandemic (commonly known as “Coronavirus”) has created unforeseen and long-lasting difficulties for the Internal Revenue Service (IRS or “Service”), taxpayers and tax professionals alike. As we start a third tax filing season under a new variant of the Coronavirus, the Department of the Treasury (“Treasury”) and the IRS “are under no illusions that it's going to go smoothly.”¹²

The letter points out specific backlogs the IRS is facing that create issues for taxpayers and tax professionals:

Currently, the IRS still has an unprecedented number of unprocessed returns in comparison to years before the pandemic. Consequently, the IRS sends numerous mistargeted notices, liens and levies. Additionally, the IRS is only answering 9 percent of all calls and only 3 percent of calls regarding individual income tax returns which prevents taxpayers from resolving these straightforward issues.¹³

However, the letter argues the IRS has not taken sufficient action to relieve the burdens associated with these issues:

Though we appreciate that the IRS recognizes that it is frustrating for all, including the IRS, that the IRS is “unable to deliver the amount of service and enforcement that our taxpayers and tax system deserves and needs,” the Service has not taken reasonable actions that would meaningfully reduce unnecessary burdens during this upcoming tax filing season.¹⁴

The letter requests the following actions to be taken by the agency:

To reduce the need for taxpayers and tax professionals to communicate with the IRS due to the persistent and erroneous notices, Treasury and the IRS should:

- Discontinue automated compliance actions until the IRS is prepared to devote the necessary resources for a proper and timely resolution of the matter.

¹² Letter Re: Relief for Taxpayers for the 2022 Filing Season, *Tax Notes Today Federal*, January 14, 2022

¹³ Letter Re: Relief for Taxpayers for the 2022 Filing Season, *Tax Notes Today Federal*, January 14, 2022

¹⁴ Letter Re: Relief for Taxpayers for the 2022 Filing Season, *Tax Notes Today Federal*, January 14, 2022

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- Align requests for account holds with the time it takes the IRS to process any penalty abatement requests.
- Offer a reasonable cause penalty waiver, similar to the procedures of first time abate (FTA) administrative waiver, without affecting the taxpayer's eligibility for FTA in future tax years.
- Provide taxpayers with targeted relief from both the underpayment of estimated tax penalty and the late payment penalty for the 2020 and 2021 tax year.¹⁵

National Taxpayer Advocate Report to Congress and Proposed Congressional Action

The first two suggestions are similar to suggestions made by National Taxpayer Advocate Erin M. Collins in her 2021 Annual Report to Congress,¹⁶ and the letter notes this in footnotes to the letter.

Ms. Collins spoke at a virtual seminar of the California Society of Enrolled Agents regarding these issues, a presentation covered in *Tax Notes Today Federal* in its January 14, 2022 edition. The article reported:

Collins said the Taxpayer Advocate Service¹⁷ has been trying to persuade the IRS to temporarily stop issuing automated notices amid the processing backlog at the agency. And while the IRS has resisted that recommendation, Collins said, congressional lawmakers seem increasingly receptive to it because they're hearing from their constituents about the challenges they've encountered with the IRS.

Collins said she received a lot of questions about a potential notice freeze during her visit to Capitol Hill following the release of her annual report to Congress January 12.¹⁸

The article continues to note the type of freeze TAS has been proposing the agency institute:

TAS has been recommending a six-month hold for collection notices, because "nine weeks and the current situation isn't doing any good,"

¹⁵ Letter Re: Relief for Taxpayers for the 2022 Filing Season, *Tax Notes Today Federal*, January 14, 2022

¹⁶ *National Taxpayer Advocate Annual Report to Congress 2021*, January 12, 2022, <https://www.taxpayeradvocate.irs.gov/reports/2021-annual-report-to-congress/full-report/>

¹⁷ TAS

¹⁸ Benjamin Guggenheim, "Congress May Consider Pausing Automated IRS Notices," *Tax Notes Today Federal*, January 14, 2022, <https://www.taxnotes.com/tax-notes-today-federal/collections/congress-may-consider-pausing-automated-irs-notices/2022/01/14/7d35c> (subscription required, retrieved January 15, 2022)

Collins said, referencing the standard hold period granted to practitioners who get an IRS collections representative on the line.

Once the automated notices are issued, they'll keep coming regardless of whether the taxpayer has a legitimate explanation for why the rationale presented in the notices is wrong, Collins added.¹⁹

Could Congress Actually Act?

Unfortunately, this is not the first time the IRS has been approached to institute relief programs, including stopping the issuance of automated notices when the IRS has not yet been able to process responses to earlier notices. But another article in that issue of *Tax Notes Today Federal* indicates that the offices of members of Congress are now beginning to be overwhelmed by constituent requests for relief.²⁰

The article cites as evidence of the increased pressure on Congressional offices the significant increase in the number of referrals from such offices to TAS:

Referrals ballooned in 2020 as the COVID-19 pandemic led to IRS office closings around the country and surged again in 2021 as the agency's struggles continued. During the three years before the pandemic, members of Congress asked the taxpayer advocate to assist with constituent problems 10,000 to 11,000 times a year. That figure jumped to about 35,000 in 2020. The 66,453 referrals from members of Congress in 2021 represent a sixfold jump from the pre-pandemic level.²¹

But such referrals are now adding to the excess burden on TAS, as the article continues:

“Hey, we’re happy to help, but we’re struggling, too,” Collins said, noting that while taxpayers are having a hard time getting through to the IRS, congressional offices also are having difficulty getting through to her hard-pressed staff.²²

¹⁹ Benjamin Guggenheim, “Congress May Consider Pausing Automated IRS Notices,” *Tax Notes Today Federal*, January 14, 2022

²⁰ Doug Sword, “Lawmakers Report Surge in Requests for Help With Unresponsive IRS,” *Tax Notes Today Federal*, January 14, 2022, <https://www.taxnotes.com/tax-notes-today-federal/politics-taxation/lawmakers-report-surge-requests-help-unresponsive-irs/2022/01/14/7d351> (subscription required, retrieved January 15, 2022)

²¹ Doug Sword, “Lawmakers Report Surge in Requests for Help With Unresponsive IRS,” *Tax Notes Today Federal*, January 14, 2022

²² Doug Sword, “Lawmakers Report Surge in Requests for Help With Unresponsive IRS,” *Tax Notes Today Federal*, January 14, 2022

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The article goes on to provide information from a number of Senators and Representatives about the problems they are facing dealing with constituent service requests on these issues.²³

Given that 2022 is an election year, Senators' and Representatives' inability to provide services to constituents to resolve issues with the IRS and other agencies (the article notes the issue is not limited to the IRS, specifically mentioning issues with the Social Security Administration)²⁴ may spur an impetus to take some sort of action to grant relief or face the wrath of voters at the polls in November.

SECTION: 6011

IRS ANNOUNCES BEGINNING OF FILING SEASON AND OTHER TAX SEASON INFORMATION

Citation: “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, 1/10/22

The individual tax filing season will open on January 24 when the IRS begins accepting returns the agency announced in News Release IR-2022-08.²⁵ The release also discusses a number of other issues related to the upcoming filing season.

Opening of the 2022 Filing Season

The Notice begins with the announcement of the date the IRS will begin accepting 2021 tax returns:

The Internal Revenue Service announced that the nation's tax season will start on Monday, January 24, 2022, when the tax agency will begin accepting and processing 2021 tax year returns.

The January 24 start date for individual tax return filers allows the IRS time to perform programming and testing that is critical to ensuring IRS systems run smoothly. Updated programming helps ensure that eligible people can claim the proper amount of the Child Tax Credit

²³ Doug Sword, “Lawmakers Report Surge in Requests for Help With Unresponsive IRS,” *Tax Notes Today Federal*, January 14, 2022

²⁴ Doug Sword, “Lawmakers Report Surge in Requests for Help With Unresponsive IRS,” *Tax Notes Today Federal*, January 14, 2022

²⁵ “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, January 10, 2022, <https://www.irs.gov/newsroom/2022-tax-filing-season-begins-jan-24-irs-outlines-refund-timing-and-what-to-expect-in-advance-of-april-18-tax-deadline> (retrieved January 13, 2022)

after comparing their 2021 advance credits and claim any remaining stimulus money as a Recovery Rebate Credit when they file their 2021 tax return.²⁶

The notice explains the reasons for the annual shutdowns and the delay in accepting tax returns after a year ends:

“Planning for the nation’s filing season process is a massive undertaking, and IRS teams have been working non-stop these past several months to prepare,” said IRS Commissioner Chuck Rettig. “The pandemic continues to create challenges, but the IRS reminds people there are important steps they can take to help ensure their tax return and refund don’t face processing delays. Filing electronically with direct deposit and avoiding a paper tax return is more important than ever this year. And we urge extra attention to those who received an Economic Impact Payment or an advance Child Tax Credit last year. People should make sure they report the correct amount on their tax return to avoid delays.”²⁷

Update on 2020 Returns Processing Backlog

The News Release also provided an update on the IRS return processing backlog. The IRS had previously stated in December that all returns filed prior to April 2021 had been processed by the agency. The new release does not move that date:

The IRS continues to reduce the inventory of prior-year individual tax returns that have not been fully processed. As of December 3, 2021, the IRS has processed nearly 169 million tax returns. All paper and electronic individual 2020 refund returns received prior to April 2021 have been processed if the return had no errors or did not require further review.²⁸

²⁶ “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, January 10, 2022

²⁷ “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, January 10, 2022

²⁸ “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, January 10, 2022

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The IRS goes on to tell taxpayers that even if their 2020 return has not been fully processed, they can still file their 2021 return:

Taxpayers generally will not need to wait for their 2020 return to be fully processed to file their 2021 tax returns and can file when they are ready.²⁹

While the statement is correct in the sense that taxpayers can file 2021 without 2020 being fully processed, advisers may find that if taxpayers had requested some or all of their 2020 refund be applied to the 2021 return, the taxpayers may end up with correspondence from the IRS adjusting their reported payments of tax on the 2021 return. Given the problems advisers are running into communicating with the IRS, prudence may suggest not rushing to file returns where such overpayments were applied to 2021 if the prior return has not completed processing.

Expected Time Period from Filing a 2021 Return to Receiving a Refund

The news release gives the following information regarding when taxpayers can expect to receive their refund after filing a return:

Overall, the IRS anticipates most taxpayers will receive their refund within 21 days of when they file electronically if they choose direct deposit and there are no issues with their tax return. The IRS urges taxpayers and tax professionals to file electronically. To avoid delays in processing, people should avoid filing paper returns wherever possible.

By law, the IRS cannot issue a refund involving the Earned Income Tax Credit or Additional Child Tax Credit before mid-February, though eligible people may file their returns beginning on January 24. The law provides this additional time to help the IRS stop fraudulent refunds from being issued.³⁰

However, the IRS goes on to caution that some taxpayers will not see their refund within the above time frames:

Some returns, filed electronically or on paper, may need manual review, which delays the processing, if our systems detect a possible error or missing information, or there is suspected identity theft or fraud. Some of these situations require us to correspond with taxpayers, but some do not. This work does require special handling by

²⁹ “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, January 10, 2022

³⁰ “2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline,” IRS News Release IR-2022-08, January 10, 2022

an IRS employee so, in these instances, it may take the IRS more than the normal 21 days to issue any related refund. In those cases where IRS is able to correct the return without corresponding, the IRS will send an explanation to the taxpayer.

Advance Child Tax Credit and Third Economic Impact Payment

The news release provides information on how taxpayers can obtain information on the amounts the IRS reports they have received for the advance Child Tax Credit and Third Economic Impact Payment.

With regard to the advance Child Tax Credit, the IRS provides the following information:

The IRS started sending Letter 6419, 2021 advance Child Tax Credit, in late December 2021 and continues to do so into January. The letter contains important information that can help ensure the return is accurate. People who received the advance CTC payments can also check the amount of the payments they received by using the CTC Update Portal³¹ available on IRS.gov.

Eligible taxpayers who received advance Child Tax Credit payments should file a 2021 tax return to receive the second half of the credit. Eligible taxpayers who did not receive advance Child Tax Credit payments can claim the full credit by filing a tax return.³²

The release also gives information on the Third Economic Impact Payment:

The IRS will begin issuing Letter 6475, Your Third Economic Impact Payment, to individuals who received a third payment in 2021 in late January. While most eligible people already received their stimulus payments, this letter will help individuals determine if they are eligible to claim the Recovery Rebate Credit for missing stimulus payments. If so, they must file a 2021 tax return to claim their remaining stimulus amount. People can also use IRS online account³³ to view their Economic Impact Payment amounts.³⁴

³¹ <https://www.irs.gov/credits-deductions/child-tax-credit-update-portal>

³² "2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline," IRS News Release IR-2022-08, January 10, 2022

³³ <https://www.irs.gov/payments/your-online-account>

³⁴ "2022 tax filing season begins Jan. 24; IRS outlines refund timing and what to expect in advance of April 18 tax deadline," IRS News Release IR-2022-08, January 10, 2022

