

Requirement that Specified Tax Return Preparers Electronically File Form 1040-NR (U.S. Nonresident Alien Income Tax Return)

Notice 2020-70

SECTION 1. PURPOSE

This notice modifies Notice 2011-26 (2011-17 I.R.B. 720) to generally remove Form 1040-NR, U.S. Nonresident Alien Income Tax Return, from the list of returns that are administratively exempt from the electronic filing requirement imposed on specified tax return preparers by section 6011(e)(3) of the Internal Revenue Code and § 301.6011-7 of the Procedure and Administration Regulations, and to provide the circumstances under which the Form 1040-NR remains subject to the exemption. This notice further provides that future updates to the list of returns in Notice 2011-26 that are administratively exempt from the electronic filing requirement due to IRS e-file limitations will be provided for in IRS Publication 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters.

SECTION 2. BACKGROUND

Section 6011(e)(3)(A) and § 301.6011-7(b) contain an electronic filing requirement for any individual income tax return that is prepared by and filed by a specified tax return preparer.

Under section 6011(e)(3)(B) and as further defined in § 301.6011-7(a)(3), a “specified tax return preparer” means, with respect to any calendar year, any tax return preparer within the meaning of section 7701(a)(36) and § 301.7701-15, who prepares any individual income tax return, unless the tax return preparer (or his or her firm, if the tax return preparer is a member of a firm) reasonably expects to file 10 or fewer individual income tax returns in the calendar year.

Section 301.6011-7(c)(2) permits administrative exemptions from the electronic filing requirement for certain classes of specified tax return preparers, or regarding certain types of individual income tax returns, as the IRS determines necessary to promote effective and efficient tax administration.

Notice 2011-26 sets forth the specific administrative exemptions to the electronic filing requirement under section 6011(e)(3) and § 301.6011-7(b). These administrative exemptions apply to certain categories of specified tax return preparers and certain types of individual income tax returns, including certain individual income tax returns and attachments to returns for which IRS barriers or other system limitations prevent the electronic filing of those returns and attachments. See Notice 2011-26 at 721-722.

For the exemption relating to IRS electronic filing (e-file) limitations, Notice 2011-26 provides a list of the exempt returns, which includes the Form 1040-NR. The IRS e-file limitations that previously prevented the electronic filing of the Form 1040-NR have been resolved. Except as provided in section 3.B. of this notice, IRS e-file limitations no longer apply to the Form 1040-NR, and many taxpayers can now file income tax returns on that form electronically.

To reflect the changes in IRS e-file capacities and limitations, this notice modifies Notice 2011-26 as it applies to returns that cannot be electronically filed because of the IRS e-file limitations. This notice does not affect the exemptions provided in Notice 2011-26 for certain categories of specified tax return preparers, including certain foreign tax return preparers. Foreign tax return preparers without a social security number who live and work abroad remain exempt from the electronic filing requirement if they are not a member of a firm that is eligible for electronic filing with the IRS and they applied for a Preparer Tax Identification Number (PTIN) under one of the methods described in Notice 2011-26.

SECTION 3. THE EXEMPTION FOR FORM 1040-NR

A. In General

Except as otherwise provided in the continued exemptions set forth in section 3.B. of this notice, the exemption for Form 1040-NR from the electronic filing requirement under section 6011(e)(3) is removed for tax returns filed for taxable years ending on or after December 31, 2020. Accordingly, a specified tax return preparer must electronically file a Form 1040-NR, unless (1) an exemption described in section 3.B. of this notice for these taxable years or (2) an exemption under § 301.6011-7(c) or Notice 2011-26, as modified by this notice, applies.

B. Continued Exemptions

The IRS does not currently accept Form 1040-NR tax returns via electronic filing by certain taxpayers. Accordingly, the exemption from the electronic filing requirement set forth in section 6011(e)(3) remains in effect for a Form 1040-NR filed for the

following taxpayers:

- (1) dual-status taxpayers (taxpayers who have changed status between resident alien and nonresident alien during the taxable year),
- (2) fiscal-year taxpayers,
- (3) trusts, and
- (4) estates.

The exemption for Form 1040-NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents, also remains in effect.

SECTION 4. FUTURE UPDATES TO THE LIST OF RETURNS ADMINISTRATIVELY EXEMPT FROM ELECTRONIC FILING DUE TO IRS E-FILE LIMITATIONS

The remaining administrative exemptions in Notice 2011-26 for certain types of individual income tax returns that are exempt due to IRS e-file limitations remain in effect until a revision to IRS Publication 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters, or a successor publication, announces that an individual income tax return can be electronically filed and announces the taxable year for which the exemption from the electronic filing requirement under section 6011(e)(3) is removed with respect to that return. See <https://www.irs.gov/pub/irs-pdf/p4164.pdf>.

Updates to all other administrative exemptions described in Notice 2011-26 (aside from exemptions due to IRS e-file limitations) will continue to be announced in a notice or other appropriate guidance, rather than in IRS Publication 4164.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2011-26 is modified.

SECTION 6. EFFECTIVE DATE

This notice is effective for individual tax returns filed for taxable years ending on or after December 31, 2020.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Han Huang of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Ms. Huang at (202) 317-6844 (not a toll-free number).