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Proposed Rule Expands Required Electronic Filing of IRS Forms

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Currently, employers must file certain types of forms electronically (not via paper) only if they file 250 or more of the same type of form (e.g., Forms W-2 and 1095-C are evaluated separately). In a recently issued proposed rule, the IRS announced it intends to require aggregation of all information returns to determine the 250-return threshold.

Example

An employer files only two types of forms for 2018 in early 2019:

- 200 Forms W-2 with the SSA; and
- 100 Forms 1095-C and one Form 1094-C with the IRS.

The employer can file by paper because it has less than 250 of each type of filing.

However, if the proposed rule is finalized, the employer will have to file electronically because it has 301 **total** filings.

Specifically, the proposed rules states that “if during a calendar year a person is required to file a total of 250 or more information returns **of any type** covered by §301.6011-2(b), the person is required to file those information returns electronically” (emphasis added).

Forms covered by §301.6011-2(b) include (but are not limited to):

- Form W-2
- Form 1094-C
- Form 1095-C
- Form 1099

Additionally, the proposed rule provides that if the information returns originally filed for the calendar year are required to be filed electronically, any correction to those forms must also be filed electronically. This means, for instance, if an employer files 1,000 Forms 1095-C electronically with the IRS and later needs to correct 10 of those forms, the submission of the 10 corrected forms must be electronic.

If finalized, these rules would apply to information returns required to be filed after December 31, 2018 and any corrected returns filed after that date. Thus, this rule change may affect calendar year (CY) 2018 Forms W-2 and CY 2018 Forms 1094-C and 1095-C.

The proposed rule does not amend the existing regulations allowing persons who are required to file returns electronically to request a waiver of the electronic-filing requirement.

Employers with less than 250 forms can always voluntarily file electronically and the vast majority of employers do so.

Employer Action

- Employers that have not electronically filed in the past should be aware of this proposed rule and prepare to carefully review the number of forms submitted on an aggregated basis to determine whether they will be subject to electronic filing of CY 2018 forms.
- Affected employers that handle these IRS forms internally (without a third-party provider) will need to understand and prepare with IT as the filing process is complicated. Alternatively, it may be time to review a third-party vendor solution. If interested, we can help in this process.
- Employers can consider submitting comments to the IRS regarding this proposed regulation.