



# Tax News and Industry Updates

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## Inside This Issue

Form 1040-X Electronic Filing.....	1
Payment Due Notices.....	2
Medicaid Coverage of COVID-19 Testing.....	2
IRS to Mail Special Letters to Non-Filers.....	2
Deferral of Payroll Taxes Update.....	3
Recapture of Excess Employment Tax Credits.....	4

## Form 1040-X Electronic Filing

### Cross References

- IR-2020-182, August 17, 2020

Marking a major milestone in tax administration, the Internal Revenue Service has announced that taxpayers can now submit Form 1040-X electronically with commercial tax-filing software.

As IRS e-filing has grown during the past 30 years, Form 1040-X, *Amended U.S. Individual Income Tax Return*, has been one of the last major individual tax forms that needed to be paper filed. The announcement follows years of effort by the IRS, and the enhancement allows taxpayers to quickly electronically correct previously filed tax returns while minimizing errors.

“The ability to file the Form 1040-X electronically has been an important long-term goal of the IRS e-file initiative for many years,” said Sunita Lough, IRS Deputy Commissioner for Services and Enforcement. “Given the details needed on the form, there have been numerous challenges to add this form to the e-file family. Our IT and business operation teams worked hard with

the nation’s tax industry to make this change possible. This is another success for IRS modernization efforts. The addition helps taxpayers have a quicker, easier way to file amended returns, and it streamlines work for the IRS and the entire tax community.”

Making the 1040-X an electronically filed form has been a goal for the tax software and tax professional industry for years. It’s been a continuing recommendation from the Internal Revenue Service Advisory Council (IRSAC) and Electronic Tax Administration Advisory Committee (ETAAC).

Currently, taxpayers must mail a completed Form 1040-X to the IRS for processing. The new electronic option allows the IRS to receive amended returns faster while minimizing errors normally associated with manually completing the form.

Since the tax-filing software allows users to input their data in a question-answer format, it simplifies the process for them. It also makes it easier for IRS employees to answer taxpayer questions since the data is entered electronically and submitted to the agency almost simultaneously.

“Adding the 1040-X to the e-filing portfolio provides a better experience for the taxpayer, all around. It makes submitting an amended return easier and it allows our employees to process it in a more efficient way,” said Ken Corbin, the IRS Wage and Investment commissioner and head of the division responsible for processing these returns.

For the initial phase, only tax year 2019 Forms 1040 and 1040-SR returns can be amended electronically. Additional improvements are planned for the future.

About three million Forms 1040-X are filed by taxpayers each year.

Taxpayers still have the option to submit a paper version of the Form 1040-X and should follow the instructions for preparing and submitting the paper form. Those filing their Form 1040-X electronically and on paper can use the Where's My Amended Return? online tool at [www.irs.gov](http://www.irs.gov) to check the status of their amended return.

## Payment Due Notices

### Cross References

- [www.irs.gov](http://www.irs.gov)

The IRS has suspended the mailing of three notices: the CP501, the CP503, and the CP504. These notices are mailed to taxpayers who have a balance due on their taxes. Although the IRS continues to make significant reductions in the backlog of unopened mail that developed while most IRS operations were closed due to COVID-19, this temporary adjustment to processing is intended to lessen any possible confusion that might be associated with delays in processing correspondence received from taxpayers.

The IRS is taking the step to avoid confusion for taxpayers who previously received a balance due notice (CP14) and mailed a payment to the IRS. However, that payment may still be unopened. The CP501, the CP503, and the CP504 are follow-up notices that are typically automatically sent to taxpayers who do not respond to the CP14. These automatic follow-up notices will be temporarily stopped until the backlog of mail is reduced. The IRS will continue to assess the mail inventory to determine the appropriate time to resume the follow-up notices. However, taxpayers who have received but not yet responded to a CP14 balance due notice are encouraged to promptly respond.

In addition, the IRS has previously announced that these payments in the unopened mail will be posted and credited on the date the IRS received them rather than the date the agency opened and processed them. The IRS reminds taxpayers in this situation they should not cancel their checks and should ensure funds continue to be available so the IRS can process them to avoid potential penalties and interest. To provide fair and equitable treatment, the IRS is also providing relief from bad check penalties for dishonored checks the agency received between March 1 and July 15 due to delays in this IRS processing.

As the IRS works to stop these mailings at our processing centers, some taxpayers and tax professionals may still receive these notices during the next few weeks due to delivery of existing mailings.

Due to high call volumes, the IRS suggests waiting to contact the agency about any unprocessed paper payments still pending. See [www.irs.gov/payments](http://www.irs.gov/payments) for options to make payments other than by mail.

## Medicaid Coverage of COVID-19 Testing

### Cross References

- Notice 2020-66

The Families First Coronavirus Response Act (Public Law 116-127) authorizes states to provide COVID-19 testing and diagnostic services to uninsured individuals under the Medicaid program. For eligible individuals who purchase health insurance coverage through a Health Insurance Exchange, IRC section 36B provides that a taxpayer is allowed a Premium Tax Credit, but only for months the individual is not eligible for minimum essential coverage other than coverage in the individual market. Government-sponsored health insurance programs are generally considered minimum essential coverage. Thus, individuals who are eligible for Medicaid coverage generally are not eligible for the Premium Tax Credit.

The IRS recently issued guidance on this subject stating that eligibility for Medicaid coverage that is limited to COVID-19 testing and diagnostic services is not minimum essential coverage for purposes of IRC section 36B. Thus, an individual's eligibility for this coverage for one or more months does not prevent those months from qualifying as coverage months for purposes of determining eligibility for the Premium Tax Credit.

**Note:** An individual's income level may be too high to qualify for Medicaid in general, but not too high to qualify for free COVID-19 testing and diagnostic services through Medicaid. Thus, the reason for carving out this exception to the rule that says you cannot qualify for the Premium Tax Credit if you are eligible for Medicaid.

## IRS to Mail Special Letters to Non-Filers

### Cross References

- IR-2020-203, September 8, 2020

The IRS has announced that it will start mailing letters to roughly nine million Americans who typically do not file federal income tax returns who may be eligible for, but have not registered to claim, an Economic Impact Payment.

The letters will urge recipients to register at [www.irs.gov](http://www.irs.gov) by October 15 in order to receive their payment by the end of the year. Individuals can receive up to \$1,200, and married couples can receive up to \$2,400. People with qualifying children under age 17 at the end of 2019 can get up to an additional \$500 for each qualifying child.

The letters are being sent to people who have not filed a return for either 2018 or 2019. Based on an internal analysis, these are people who do not typically have a tax return filing requirement because they appear to have very low incomes, based on Forms W-2, 1099s and other third-party statements available to the IRS. Many in this group are still eligible to receive an Economic Impact Payment.

“The IRS has made an unprecedented outreach effort to make sure people are aware of their potential eligibility for an Economic Impact Payment this year,” said IRS Commissioner Chuck Rettig. “Millions who don’t normally file a tax return have already registered and received a payment. We are taking this extra step to help Americans who may not know they could be eligible for this payment or don’t know how to register for one. People who aren’t required to file a tax return can quickly register on [www.irs.gov](http://www.irs.gov) and still get their money this year.”

The letter, officially known as IRS Notice 1444-A, is written in English and Spanish and includes information on eligibility criteria and how eligible recipients can claim an Economic Impact Payment on [www.irs.gov](http://www.irs.gov). The mailing, which will begin around September 24, will be delivered from an IRS address. To help address fraud concern, a copy of the letter is available on [www.irs.gov](http://www.irs.gov).

If those receiving letters have not done so already, the letter urges eligible individuals to register by October 15 for a payment by using the free “Non-Filers: Enter Payment Info Here” tool, available in English and Spanish and only on [www.irs.gov](http://www.irs.gov). More than seven million people have used the Non-Filers tool so far to register for a payment. Those unable to access the Non-Filers tool may submit a simplified paper return following the procedures described in the Economic Impact Payment FAQs on [www.irs.gov](http://www.irs.gov).

Receiving a letter is not a guarantee of eligibility for an Economic Impact Payment. An individual is likely eligible if he or she is a U.S. citizen or resident alien, has a work-eligible Social Security number, and cannot be claimed as dependent on someone else’s federal income tax return. However, there can be a variety of situations that could affect an individual’s eligibility.

The registration deadline for non-filers to claim an Economic Impact Payment through the Non-Filers tool is October 15, 2020. People can also wait until next year and claim it as a refundable credit on their 2020 federal income tax.

**Note:** Non-filers who receive Social Security and other federal benefits were supposed to automatically receive their Economic Impact Payment in the same manner as they receive their federal benefits. The nine million non-filers who will be receiving these letters are those who do not receive Social Security or other federal benefits. A married couple with no children earning \$22,000 in 2019 from a W-2 job would be below the filing requirement but earn too much to qualify for the Earned Income Credit. Assuming no federal taxes were withheld, they would not have needed to file a 2019 federal income tax return.



## Deferral of Payroll Taxes Update

### Cross References

- Notice 2020-65

On August 8, 2020, the President issued a memorandum directing the IRS to use its authority under IRC section 7508A to defer the withholding, deposit, and payment of the employee’s share of Social Security taxes (the 6.2% FICA tax that is withheld from employee wages). The IRS recently issued guidance stating that employers who are required to withhold and pay the employee’s share of Social Security tax or the Railroad Retirement tax equivalent are affected by the COVID-19 emergency for purposes of this relief (Affected Taxpayers). Under this relief provision, the due date for the withholding and payment of the tax imposed by IRC section 3101(a) and the equivalent amount imposed under IRC section 3201 on Applicable Wages is postponed until the period beginning on January 1, 2021, and ending on April 30, 2021.

Applicable Wages means wages paid to employees during the period beginning on September 1, 2020, and ending on December 31, 2020, but only if the amount of such wages paid for a bi-weekly pay period is less than \$4,000, or the equivalent threshold amount with respect to other pay periods. The determination of Applicable Wages is made on a pay period-by-pay period basis. If the amount of wages is less than the corresponding pay period threshold amount, then that amount is considered Applicable Wages for the pay period, and the relief provided for under Notice 2020-65 applies to those wages, irrespective of the amount of wages paid to the employee for other pay periods.

An Affected Taxpayer must withhold and pay the total taxes that are deferred under Notice 2020-65 from wages paid between January 1, 2021 and April 30, 2021. Interest, penalties, and additions to tax will begin to accrue on May 1, 2021 with respect to any unpaid taxes. If necessary, the employer may make arrangements to otherwise collect the total taxes from the employee.

**Note:** Of particular interest to tax professionals who must provide guidance and advice to their payroll tax clients is what is not included in Notice 2020-65.

- 1) The notice does not provide any elections for employees. The relief provision applies to the employer, not the employee. The notice identifies the employer as the Affected Taxpayer. There is no option for the employee to make an election to have the taxes continue to be withheld, and does not require the employee to make an affirmative election to have the withholding of taxes deferred. Employees who have their take home pay temporarily increased by not having Social Security taxes withheld will experience a 12.4% drop in take home pay after January 1, 2021 when double the amount of Social Security taxes begins to be withheld.
- 2) The notice does not state whether or not the deferral of taxes is voluntary. It simply states that the withholding and payment deadline is deferred. IRC section 7508A allows the IRS to extend the filing and payment deadline for taxes due to a presidentially declared disaster, but does not require taxpayers to delay the filing and payment of their taxes. The law appears to allow employers to continue to withhold and pay the tax at the time the wages are paid. In fact, the IRS notice specifically states: "If necessary, the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee." An employer may decide it is too big a risk not to withhold the tax and that it is necessary to continue to withhold the taxes from employee wages to insure that the funds will be available to pay the tax when payment is due.
- 3) The notice does not address the related employer rules.
- 4) The notice does not address how the deferral of withholding and payment of taxes will be reported on Form 941, *Employer's Quarterly Federal Tax Return*.
- 5) The notice does not address a situation where the employee separates from service prior to the employer's ability to withhold the taxes from employee wages. A footnote in the IRS notice says the deposit obligation for employee Social Security tax does not arise until the tax is withheld. Accordingly, by postponing the time for withholding the tax, the deposit obligation is delayed. However, Regulation section 31.3102-1(a) says the employer must collect the tax from the employee in some way, even if the wages are paid in something other than money, and pay over the tax to the government. The guidance does not provide any liability relief for employers who are unable to eventually collect the tax from employees who quit prior to January 1, 2021.
- 6) The notice does not address a situation where the employer decides to not defer the withholding and payment of the employee's share of Social Security tax, and then Congress later decides to forgive the

tax liability. There will likely be political pressure on Congress to enact payroll tax forgiveness to avoid a decline in employee take home pay after January 1, 2021. By not taking advantage of the relief provided for in the notice, employees could eventually lose out on tax forgiveness.

- 7) The notice does not explain how the relief benefits the employer, even though the relief applies to the employer. By not withholding the tax, the employee's take home pay is increased. Thus, the employer's net payroll cost savings is zero. The relief is clearly for the employee, even though it is the employer who decides whether or not to take advantage of the relief. The employer's relief appears to be limited to making the employee happy due to an increase in take home pay, which could be an incentive for the employer to take advantage of the relief.



## Recapture of Excess Employment Tax Credits

### Cross References

- TD 9904, July 27, 2020
- REG-111879-20, July 27, 2020

The Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides refundable employment tax credits to employers who provide paid sick leave, paid family leave, or retain employees under certain circumstances related to COVID-19. The IRS recently issued temporary and proposed regulations for reconciling advance payments of refundable employment tax credits under these acts and recapturing the benefit of the credits when necessary. The regulations authorize the assessment of any erroneous refund of the credits.

Under the regulations, any credits claimed by an employer that exceed the amount to which the employer is entitled and that are actually credited or paid by the IRS are considered to be erroneous refunds of the credits. Erroneous refunds are treated as underpayments of the employment taxes imposed on the employer, and may be administratively assessed and collected by the IRS in the same manner as an underpayment of employment taxes. The regulations also apply to third party payors who claim credits on behalf of their common law employer clients. Assessment and administrative collection procedures will apply in the normal course in processing employment tax returns that report advances in excess of claimed credits and in examining returns for excess claimed credits.

