



# Tax News and Industry Updates

2022  
Volume 10, Issue 4

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## Penalty Relief for 2019 and 2020 Tax Returns

### Cross References

- Notice 2022-36

The IRS is providing relief for taxpayers from certain failure-to-file penalties with respect to tax returns for the 2019 and 2020 tax year. The IRS is also providing penalty relief for certain information returns. The relevant penalties will be waived or, to the extent previously assessed, abated, refunded, or credited. The relief is due to the ongoing COVID-19 pandemic, which was declared by the President as a national emergency on March 13, 2020.

The penalties listed below for the 2019 and 2020 tax year will be automatically abated, refunded, or credited, as appropriate, without any need for taxpayers to request this relief provided such returns are filed on or before September 30, 2022.

- 1) Additions to tax under IRC section 6651(a)(1) for failure to file the following income tax returns.
  - Form 1040 series of returns.
  - Form 1041 series of returns.
  - Form 1120 series of returns except Form 1120-IC-DISC and Form 1120-S.
  - Form 1066.
  - Form 990-PF.
  - Form 990-T.
- 2) Certain penalties under IRC sections 6038, 6038A, 6038C, 6039F, and 6677 for failure to timely file the following international information returns (IIRs).
  - Penalties systematically assessed when a Form 5471, and/or Form 5472, is attached to a late-filed Form 1120 or Form 1065, and
  - Penalties assessed by the campus assessment program with respect to filings on Form 3520.
- 3) Penalties under IRC section 6698(a)(1) for failure to timely file and under IRC section 6698(a)(2) for failure to show the required information on a Form 1065.
- 4) Penalties under IRC section 6699(a)(1) for failure to timely file and under IRC section 6699(a)(2) for failure to show the required information on a Form 1120-S.

In addition, the IRS will not impose the penalties under IRC section 6721(a)(2)(A) for failure to timely file any information return (as defined in IRC 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),
  - March 31, 2020 (if filed electronically), or
  - March 15, 2020.

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- 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),
  - March 31, 2021 (if filed electronically), or
  - March 15, 2021.

The penalty relief does not apply to any penalty not specifically listed above. In addition, the penalty relief is not available with respect to any return to which the penalty for fraudulent failure to file under IRC section 6651(f) or the penalty for fraud under IRC section 6663 applies. The penalty relief also does not apply to any penalties in an accepted offer in compromise. The penalty relief also does not apply to any penalty settled in a closing agreement or finally determined in a judicial proceeding.

**Note:** Penalty relief does not apply to interest charged on paying a tax liability late. The specific penalties listed above apply to late-filing penalties, not late-paying penalties.



## IRS Statement on Balance Due Notices (CP-14)

### Cross References

- <https://www.irs.gov/newsroom/irs-statement-on-balance-due-notices-cp-14>

The IRS is aware that some payments made for 2021 tax returns have not been correctly applied to joint taxpayer accounts, and these taxpayers are receiving erroneous balance due notices (CP-14 notices) or notices showing the incorrect amount.

**Who is affected?** Generally, these are payments made by the spouse (second taxpayer listed) on a married filing jointly return submitted through their Online Account. Some other taxpayers may also be affected outside of this group.

**No immediate action or phone call needed.** Taxpayers who receive a notice but paid the tax they owed in full and on time, electronically or by check, should not respond to the notice at this time. The IRS is researching the matter and will provide an update as soon as possible. Taxpayers who paid only part of the tax reported due on their 2021 joint return, should pay the remaining balance or follow instructions on the notice to enter into an installment agreement or request additional collection alternatives. Taxpayers can ensure that their payment is on their account by checking Online Account under the SSN that made the payment. Note that any assessed penalties and interest will be automatically adjusted when the payment(s) are applied correctly.

**Additional information for tax professionals.** In general, when certain payments are processed, programing does not move the payment to the married filing jointly account when the payment is:

- Not electronic and is made by the secondary spouse.
- Electronic, is made by the secondary spouse, and posts before the joint return indicator is present to identify the primary taxpayer.
- Made by the secondary spouse using the Online Account (OLA) Make a Payment functionality.



## More Options to Correct Returns Electronically

### Cross References

- IR-2022-130, June 23, 2022

The IRS has announced that more forms can now be amended electronically. These include people filing corrections to the Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*, Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*, and Form 1040-PR, *Self-Employment Tax Return—Puerto Rico*.

“This initiative has come a long way from 2020 when we first launched the ability to file amended returns, which was an important milestone to help taxpayers and the tax community,” said IRS Commissioner Chuck Rettig. “This new feature will further help people needing to make corrections. This development will also assist the IRS with its inventory work on the current backlog of amended returns. This is another tool we’re using to help get us back on track.”

Additionally, a new electronic checkbox has been added for Forms 1040/1040-SR, 1040-NR and 1040-SS/1040-PR to indicate that a superseding return is being filed electronically. A superseded return is one that is filed after the originally filed return but submitted before the due date, including extensions.

Taxpayers can also amend their return electronically if there is change to their filing status or to add a dependent who was previously claimed on another return.

About 3 million Forms 1040-X are filed by taxpayers each year. Taxpayers can still use the Where’s My Amended Return? online tool to check the status of their electronically-filed Form 1040-X.

Forms 1040 and 1040-SR can still be amended electronically for tax years 2019, 2020 and 2021 along with amended Form 1040-NR and corrected Forms 1040-SS and Form 1040-PR for tax year 2021.

In general, 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.



## IRS Encourages Tax Professionals to Inform Clients About Identity Protection PINs

### Cross References

- IR-2022-140, July 19, 2022

The IRS is encouraging tax professionals to increase their efforts to inform clients about the IRS Identity Protection PIN Opt-In Program to help protect people against tax-related identity theft.

The IP PIN serves as a critical defense against identity thieves. The IRS, state tax agencies and the nation's tax industry—working together as the Security Summit—need assistance from tax professionals to let their clients know that IP PINs are now available to anyone who can verify their identity.

Sharing information about the IP PIN Opt-In Program is the first in a five-part weekly summer series sponsored by the Summit partners to highlight critical steps tax professionals can take to protect client data—and their businesses. The series is an effort to urge tax professionals to intensify efforts to secure their systems and protect client data during the summer and throughout the year. These alerts will be issued each Tuesday for five weeks to coincide with the IRS Nationwide Tax Forums, which helps educate tax professionals on security and other important topics.

“These identity protection numbers provide an extra layer of safety to protect people against tax-related fraud tied to using stolen personal information,” said IRS Commissioner Chuck Rettig. “Following work by the IRS, the IP PIN program is now available to anyone who can verify their identity. We urge tax professionals to encourage their clients to protect themselves through the IP PIN program.”

The Electronic Tax Administration Advisory Committee, or ETAAC, last month highlighted the importance of the IP PIN to taxpayers and tax professionals.

“The IP PIN is the number one security tool currently available to taxpayers from the IRS,” the independent advisory group said in its annual report to Congress. “This tool is the key to making it more difficult for criminals to file false tax returns in the name of the taxpayer. In our view, the benefits of increased IP PIN use are many.”

The ETAAC also recommended the IRS continue to highlight and promote the IP PIN through a public awareness effort. The IRS will be taking steps to do that, including building off awareness of special items including Publication 5367, *IP PIN Opt-In Program for Taxpayers*, in English and Spanish, so that tax professionals could print and share the IP PIN information with clients. There are also special posters available in English and Spanish.

For security reasons, tax professionals cannot obtain an IP PIN on behalf of clients. Taxpayers must obtain their own IP PIN.

Summit partners urged taxpayers and tax professionals to be careful and protect the IP PIN from identity thieves. Taxpayers should share their IP PIN only with their trusted tax prep provider. Tax professionals should never store clients' IP PINs on computer systems. Also, the IRS will never call, email or text either taxpayers or tax preparers to request the IP PIN.

Tax professionals who experience a data theft can assist clients by urging them to quickly obtain an IP PIN. Even if a thief already has filed a fraudulent return, an IP PIN would still offer protections for later years and prevent taxpayers from being repeat victims of tax-related identity theft.

Here are a few things taxpayers should know about the IP PIN.

- It's a six-digit number known only to the taxpayer and the IRS.
- The opt-in program is voluntary.
- The IP PIN should be entered onto the electronic tax return when prompted by the software product or onto a paper return next to the signature line.
- The IP PIN is valid for one calendar year; taxpayers must obtain a new IP PIN each year.
- Only taxpayers who can verify their identities may obtain an IP PIN.
- IP PIN users should never share their number with anyone but the IRS and their trusted tax preparation provider. The IRS will never call, email or text a request for the IP PIN.

To obtain an IP PIN, the best option is the Get an IP PIN, the IRS online tool. Go to:

<https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin>

Taxpayers must validate their identities through Secure Access authentication to access the tool and their IP PIN. Before attempting this rigorous process, see Secure Access: How to Register for Certain Online Self-Help Tools. Go to:

<https://www.irs.gov/privacy-disclosure/secure-access-how-to-register-for-certain-online-self-help-tools>



If taxpayers are unable to validate their identity online and if their income is below \$73,000 for individuals or below \$146,000 for married couples, they may file Form 15227, *Application for an Identity Protection Personal Identification Number*. The IRS will call the telephone number provided on Form 15227 to validate their identity. However, for security reasons, the IRS will assign an IP PIN for the next filing season. The IP PIN cannot be used for the current filing season.

Taxpayers who cannot validate their identities online, or on the phone with an IRS employee after submitting a Form 15227, or who are ineligible to file a Form 15227 may call the IRS to make an appointment at a Taxpayer Assistance Center. They will need to bring one picture identification document and another identification document to prove their identity. Once verified, the taxpayer will receive an IP PIN via U.S. Postal Service within three weeks.

The IP PIN process for confirmed victims of identity theft remains unchanged. These victims will automatically receive an IP PIN each year.

For more information, go to [IRS.gov](https://www.irs.gov).



## Mileage Log Must Be Contemporaneous

### Cross References

- *Wolpert*, T.C. Memo. 2022-070, July 7, 2022

This is another case illustrating the importance of maintaining a contemporaneous mileage log book to claim a business deduction for the business use of a vehicle.

The taxpayer traveled for his consulting business and deducted car and truck expenses on his Schedule C, *Profit or Loss From Business*. The IRS disallowed the mileage deductions on the grounds that the taxpayer failed to substantiate the mileage under the strict substantiation rules of IRC section 274(d).

Under the substantiation requirements, no deduction is allowed unless the taxpayer substantiates:

- 1) The amount of each expense,
- 2) The mileage for each business use of the vehicle and the total mileage for all use of the vehicle during the tax year,
- 3) The date of each business use of the vehicle, and
- 4) The purpose of each business use.

These elements must be substantiated using “adequate records” or “sufficient evidence corroborating the taxpayer’s own statement.” [Reg. §1.274-5T(c)]

In order to substantiate car and truck expenses through adequate records, a taxpayer must generally maintain a contemporaneous log, trip sheet, or similar record, as well as corroborating documentary evidence that together establish each required element of the expense. In the absence of adequate records, a taxpayer must establish each required element by “his own statement, whether written or oral, containing specific information in detail as to such element” and by “other corroborative evidence sufficient to establish such element.”

The court concluded that the taxpayer did not substantiate the car and truck expenses through adequate records. The taxpayer provided mileage logs indicating purported dates of vehicle use, the purported origin and destination city, the mileage of each trip, and calendars similarly indicating purported dates of vehicle use and the purported origin and destination city of each trip noted.

On brief, the taxpayer claimed that these materials were contemporaneously maintained while the IRS argued otherwise. The court found the record ambiguous as to this question of fact. The taxpayer did not explicitly testify on direct or cross-examination that these particular items of evidence were contemporaneous records, although the taxpayer did testify that he “kept a log and a calendar on a clipboard in the car.” The court noted the mileage logs appear to be printouts from a computer-generated spreadsheet rather than the original log referred to by the taxpayer and allegedly kept in the vehicle.

The court also noted that these computer-generated spreadsheets made no mention whatsoever of the business purpose of each trip nor the total mileage of all use of the vehicle during the tax year. The taxpayer’s generalized testimony was insufficient to otherwise establish any of the required elements under the substantiation rules.

**Note:** Reconstructing records via a computer printout appears to be the key issue. The taxpayer’s testimony that they were based on contemporaneous records was not enough. Such contemporaneous records (if they did exist) needed to be produced during trial in order for the court to consider if they supported the taxpayer’s testimony.

