

IRS Extends Deadline for Exempt Organizations to e-file Certain Returns

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Notice 2012-4, 2011-3 IRB, December 16, 2011, IRC Sec(s)

This notice notifies tax exempt organizations that the IRS Modernized eFile (MeF) system will not be available from January 1, 2012 through February 29, 2012 for electronic filing of Form 990, *Return of Organization Exempt From Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, Form 990-PF, *Return of Private Foundation* or Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations* (affected returns). In addition, this notice describes options available to organizations affected by this two month suspension period and provides relief under sections 6081, 6651, and 6652 of the Internal Revenue Code with respect to certain filing requirements.

Two-Month Suspension of IRS MeF System for Forms 990 and 1120-POL Filers

In order to facilitate systems and programming changes, the IRS is suspending the availability of its MeF system for filing Forms 990, 990-EZ, 990-PF, and 1120-POL from January 1, 2012 through February 29, 2012 (suspension period). Although no organizations will be able to file these forms electronically during the suspension period, only organizations with filing due dates (or extended due dates) for such returns in the suspension period are considered "affected organizations" for purposes of this notice. Paper forms may continue to be filed during the suspension period and affected organizations may take advantage of the relief provided in this notice including the ability to electronically file by March 30, 2012. Organizations that file Form 990-N (e-Postcard) may continue to electronically file during this period.

Extended Filing Date for Eligible Affected Organizations

In order to minimize the impact on affected organizations, the IRS is granting an extension of time to file affected returns to March 30, 2012 to organizations whose original due date (or first three-month extended due date) for the affected return occurs during the suspension period. The extension of time to file applies to all such organizations with affected return filings due during this period, whether or not they are required to file electronically. Affected organizations required to file electronically may file electronically prior to January 1, 2012 or between March 1, 2012 and March 30, 2012. Affected organizations that are not required to file electronically may do the same or may file on paper by March 30, 2012. This extension of time to file is automatic – therefore, affected organizations need not file Form 8868, *Application for Extension of Time to File an Exempt Organization Return*, if they file their returns by March 30, 2012.

Because extensions of time to file generally may not exceed six months, the extension of time to file to March 30, 2012 provided by this notice is **not available** for affected organizations that have already obtained two three-month extensions of time to file (i.e., the full six-month extension allowed by statute). However, as discussed in more detail below, the IRS will provide relief from any late filing penalty to affected organizations that were previously granted two three-month extensions of time to file that expire during the suspension period, provided their returns are filed by March 30, 2012. In addition, as indicated in more detail below, this notice provides such organizations normally required to file electronically the option of filing on paper during the suspension period.

Interaction between the March 30, 2012 Extension and Other Extensions

An affected organization that has not previously received an extension and wishes to extend its filing due date after March 30, 2012, may request an automatic three-month extension of time to file by properly completing and filing Form 8868 by its original due date. For example, an organization with an original Form 990 due date of February 15, 2012 that properly completes and files Form 8868 by February 15, 2012 will receive a three-month extension of time to file that ends on May 15, 2012. In the case of an organization that has already obtained an automatic three-month extension that ends during the suspension period, the IRS will grant the organization an additional three-month extension if the organization properly completes and files Form 8868 by its extended due date. For example, a February 15, 2012 extended due date will be further extended to May 15, 2012 if the organization properly completes and files Form 8868 by February 15, 2012. An affected organization that has already received two three-month extensions, the second of which ends during the suspension period, may not request a further extension (but as discussed below, no penalty for failure to file will apply if the organization files its return by March 30, 2012).

Extension of Time to File Does Not Extend Time to Pay Any Tax Liability

Organizations are reminded that an extension of time to file, including the automatic extension of time to file to March 30, 2012 provided in this notice, is not an extension of time to pay any tax liabilities that may be due for the

year. Therefore, an organization that has a tax liability for a return that has a due date that falls within the suspension period must make a timely payment of the amount due either by making an estimated tax payment or by filing its return on paper, if permitted normally or under this notice as described below, and remitting payment with its return or by electronic funds transfer if required.

Relief from Late Filing Penalty

An affected organization with a second extended filing due date that falls during the suspension period is not eligible for an additional extension of time to file. However, if such an organization files its return by March 30, 2012, it will have reasonable cause for its late filing and, therefore, will not be subject to a late filing penalty. Such an organization that files by March 30, 2012 is not required to file a Reasonable Cause Statement in order to take advantage of this late filing penalty relief. However, in order to avoid receiving a system-generated penalty notice for late filing, each affected organization should attach a Reasonable Cause Statement to its return. Please see the below paragraph, "Reasonable Cause Statement," for an example that organizations can use. If an affected organization erroneously receives a system-generated penalty notice for late filing from the IRS, the organization should call the telephone number on the penalty notice to request that the IRS abate the penalty in accordance with Notice 2012-4.

Limited Option to File on Paper during the Suspension Period

The automatic extension and automatic penalty relief provisions of this notice are designed to ensure that any affected organization whose filing is delayed by

reason of the suspension of the MeF system will not suffer adverse consequences and will be accorded the same results as if it filed a return by the normal filing deadline. However, the IRS recognizes that some affected organizations generally required to file electronically that have already obtained two three-month filing extensions may be uncomfortable relying on the late filing penalty relief provided in this notice. In that circumstance, the affected organization may file its return on paper. Organizations that are normally required to file electronically and choose to file on paper pursuant to this notice may receive a system-generated form asking for an explanation of why they did not file electronically. It will be sufficient to respond "Paper Filing Pursuant to Notice 2012-4."

Sample Reasonable Cause Statement

This return is being filed between March 1, 2012, and March 30, 2012, as directed by the IRS in Notice 2012-4, because electronic filing was not available January 1, 2012 through February 29, 2012. We request that penalties be waived because it would be inequitable to impose a penalty on us due to the unusual circumstances requiring us to delay the filing of this return.

Questions?

Please contact our tax department toll-free at 866.464.2839, 202.331.9880 or by email at info@calibrecpa.com.