
26 CFR 601.602: Tax forms and instructions.
(Also Part I, Sections 6012, 6061; 1.6012-5, 1.6061-1.)

Rev. Proc. 96-35

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SECTION 1. PURPOSE

This revenue procedure informs those who participate in the Magnetic Media/Electronic Filing Program for Form 1040NR, U.S. Nonresident Alien Income Tax Return ("1040NR Program"), of their obligations to the Internal Revenue Service, taxpayers, and other participants. This revenue procedure updates Rev. Proc. 95-22, 1995-1 C.B. 686.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 1.6012-5 of the Income Tax Regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.02 For purposes of this revenue procedure, a magnetically or electronically filed Form 1040NR is a composite return consisting of data transmitted on magnetic tape, floppy disk, or via modem ("transmitted media"), and certain paper documents. The non-transmitted media paper portion of the return consists of a Form 8453-NR, U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing, and other paper documents that cannot be filed on transmitted media. Form 8453-NR must be received by the Service before any composite return is complete. A composite return must contain the same information that a return filed completely on paper contains. See section 7 of this revenue procedure for procedures for completing Form 8453-NR.

.03 The Magnetic Media Project Office ("Project Office", see section 17 of this revenue procedure for address and telephone numbers) will periodically issue a list of the forms and schedules that can be magnetically or electronically filed, as well as forms, schedules, and other information that cannot be magnetically or electronically filed.

.04 A tax return with a zero balance, balance due, or refund due may be filed on transmitted media.

.05 A tax return cannot be filed on transmitted media after December 2, 1996, notwithstanding the fact that the taxpayer has been granted an extension to file beyond that date. Form 2688, Application for Additional Extension of Time To File U.S. Individual Income Tax Return, cannot be filed on transmitted media.

.06 An amended tax return cannot be filed on transmitted media. A taxpayer must file an amended tax return on paper in accordance with the instructions for Form 1040X, Amended U.S. Individual Income Tax Return.

.07 Upon request, the Project Office will provide technical information (*i.e.*, file specifications, record layouts, and testing procedures) for transmitted media filing.

.08 This revenue procedure updates Rev. Proc. 95-22, which applied to the 1040NR Program for the 1995 filing season. The updates include changes in the 1040NR Program for the 1996 filing season, clarifications of prior 1040NR Program statements, and additional guidance derived from other Service documents that relate to the 1040NR Program. Some of these updates are:

(1) Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, may now be filed on transmitted media;

(2) a 1040NR Filer must complete the necessary testing at least 30 days before the 1040NR Filer may submit a tax return (section 4.03);

(3) a 1040NR Filer may not base a fee for submission of transmitted media returns on the amount of taxes saved (section 5.05);

(4) a 1040NR Filer must submit a revised Form MAR-8980, Application for Magnetic Media Filing of Form 1040NR, if there is a change to the 1040NR Filer's business address (section 5.07);

(5) a 1040NR Filer must notify the Service when it discontinues participation in the 1040NR Program (section 5.08);

(6) additions are provided to the responsibilities of a 1040NR Return Originator (sections 5.11(5) and 5.13);

(7) a Software Developer may not incorporate into its software a Service-assigned production password (section 5.18);

(8) procedures are provided for submitting balance due returns (section 10);

(9) a 1040NR Filer must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting (section 11.02);

(10) a 1040NR Filer may be suspended for having more than one MTFIN for the same business entity at the same location unless the Service has issued more than one MTFIN to a business entity (section 12.05(9)); and

(11) the two-year period for denial or suspension is clarified (section 12.08).

SECTION 3. TRANSMITTED MEDIA FILING PARTICIPANTS—DEFINITIONS

.01 After acceptance into the 1040NR Program, as described in section 4 of this revenue procedure, a participant is referred to as "1040NR Filer."

.02 A 1040NR Filer is categorized as follows:

(1) 1040NR RETURN ORIGINATOR. A "1040NR Return Originator" is either (a) a "1040NR Return Preparer" who prepares tax returns, including Forms 8453-NR, for taxpayers who intend to have their returns magnetically or electronically filed; or (b) a "1040NR Return Collector" who accepts completed tax returns, including Forms 8453-NR, from taxpayers who intend to have their returns magnetically or electronically filed.

(2) SERVICE BUREAU. A "Service Bureau" receives tax return information on any media from a 1040NR Filer, formats the return information, and either forwards the return information to a Transmitter or sends back the return information to the 1040NR Filer. A Service Bureau may or may not process Forms 8453-NR and send them to the Project Office. A Service Bureau does not transmit returns directly to the Service.

(3) SOFTWARE DEVELOPER. A "Software Developer" develops software for the purposes of (a) formatting returns according to the Service's transmitted media return specifications; and/or (b) filing transmitted media returns directly with the Service. A Software Developer may also sell its software.

(4) TRANSMITTER. A “Transmitter” accepts a transmitted media tax return from a 1040NR Filer and submits the return directly to the Service.

.03 The 1040NR Filer categories are not mutually exclusive. For example, a 1040NR Return Originator can, at the same time, be considered a Transmitter, Software Developer, or Service Bureau depending on the function(s) performed.

SECTION 4. ACCEPTANCE INTO THE 1040NR PROGRAM

.01 To be accepted into the 1040NR Program, an applicant must:

(1) file a properly completed application using Form MAR-8980 with the Project Office, unless previously accepted into the 1040NR Program;

(2) successfully complete the necessary testing with the Project Office if the applicant intends to file transmitted media returns or has developed software for formatting or filing transmitted media returns; and

(3) receive a letter of acceptance into the 1040NR Program.

.02 Once accepted into the 1040NR Program, a 1040NR Filer must, for each year that it intends to submit returns on transmitted media:

(1) submit a revised Form MAR-8980 if there is any change to the information previously submitted on that form.

(2) successfully complete the necessary testing with the Project Office if the 1040NR Filer intends to file transmitted media returns or has developed software for formatting or filing transmitted media returns; and

(3) receive a letter confirming that the 1040NR Filer may submit tax returns for the current filing season.

.03 A 1040NR Filer may only submit actual tax returns beginning 30 days after successfully completing the necessary testing.

.04 The following reasons may result in a rejection of an application to participate in the 1040NR Program (this list is not all-inclusive):

(1) conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty or breach of trust;

(2) failure to file timely and accurate business or personal tax returns;

(3) failure to timely pay personal or business tax liabilities;

(4) assessment of penalties;

(5) suspension/disbarment from practice before the Service;

(6) other facts or conduct of a disreputable nature that would reflect adversely on the 1040NR Program;

(7) misrepresentation on an application;

(8) suspension or rejection from the 1040NR Program in a prior year;

(9) unethical practices in return preparation;

(10) stockpiling returns (see section 5.06 of this revenue procedure) prior to official acceptance into the 1040NR Program;

(11) knowingly and directly or indirectly employing or accepting assistance from any person who has been denied acceptance into the 1040NR Program or is suspended from that Program. This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from that Program; or

(12) knowingly and directly or indirectly accepting employment as an associate, correspondent, or subagent from, or sharing fees with, any person who has been denied acceptance into the 1040NR Program or is suspended from that Program. This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from that Program.

SECTION 5. RESPONSIBILITIES OF A 1040NR FILER

.01 To ensure that complete returns are accurately and efficiently filed, a 1040NR Filer must comply with all publications and notices of the Service. Currently, these publications and notices include:

(1) Procedures for Magnetic Media Filing of U.S. Nonresident Alien Income Tax Returns, Form 1040NR (available from the Project Office); and

(2) File Specifications and Record Layouts for Magnetic Media Filing of U.S. Nonresident Alien Income Tax Returns, Form 1040NR (available from the Project Office).

.02 A 1040NR Filer must ensure that no other entity uses its assigned Magnetic Tape 1040NR Filer Identification Number (MTFIN). A MTFIN cannot be transferred by sale, loan, gift, or otherwise to another entity.

.03 A 1040NR Filer must maintain a high degree of integrity, compliance, and accuracy.

.04 A 1040NR Filer may only accept a return for transmitted media filing directly from a taxpayer or from a 1040NR Return Originator.

.05 If a 1040NR Filer charges a fee for the submission of a transmitted media tax return, the fee may not be based on a percentage of the refund amount or on the amount of taxes saved. A 1040NR Filer may not charge a separate fee for Direct Deposit. See section 9 of this revenue procedure for a discussion of Direct Deposit.

.06 A 1040NR Filer is responsible for ensuring that stockpiling does not occur. Prior to official acceptance of the 1040NR Filer into the 1040NR Program, stockpiling means collecting returns from taxpayers. After official acceptance, stockpiling means:

(1) in the case of a 1040NR Return Originator, waiting for more than three days after receiving the necessary information to submit a return to a Transmitter, or

(2) in the case of a Transmitter, waiting for more than ten days after receiving the necessary information to submit a transmitted media tax return to the Service.

.07 A previously accepted 1040NR Filer must submit a revised Form MAR-8980 to update information when there is any change to:

(1) the Firm name or Doing Business As (DBA) name;

(2) the business mailing address;

(3) the contact representative's name or telephone number; or

(4) the transmitted media filing category.

.08 A 1040NR Filer must notify the Project Office within 14 days of discontinuing its participation in the 1040NR Program.

.09 A 1040NR Filer must ensure that a transmitted media return is filed on or before the due date of the tax return. A tax return is not considered filed until the transmitted media portion of the tax return is acknowledged by the Service as accepted for processing and a completed and signed Form 8453-NR is received by the Service. However, if the transmitted media portion of a return is successfully transmitted on or shortly before the due date and the taxpayer complies with section 7.01 of this revenue procedure, the return will be deemed timely filed. If the transmitted media portion of a return is initially transmitted on or shortly before the due

date and is ultimately rejected, but the taxpayer complies with section 5.13 of this revenue procedure, the return will be deemed timely filed. In the case of a balance due return, see section 10 of this revenue procedure for instructions on how to make a timely payment of tax.

.10 A 1040NR Filer must ensure that the return for any individual is received by the Service on or before:

(1) April 15 if the individual was an employee and received wages subject to U.S. federal income tax withholding; or

(2) June 15 if the individual did not receive such wages. However, section 2.05 of this revenue procedure provides that a transmitted media return cannot be filed after December 2, 1996.

.11 A 1040NR Return Originator must:

(1) comply with the procedures for completing Form 8453-NR described in section 7 of this revenue procedure;

(2) furnish the taxpayer with a copy of the signed Form 8453-NR and, in the case of a prepared or corrected return, the non-transmitted media portions of the return;

(3) retain the following material until the end of the calendar year in which the transmitted media return was filed, unless otherwise notified by the Service:

(a) a copy of the signed Form 8453-NR, Forms W-2, W-2G, Certain Gambling Winnings, and 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and the non-transmitted media portion of the taxpayer's return;

(b) a complete copy of the magnetically or electronically transmitted portion of the taxpayer's return (may be retained on computer media) that can be readily and accurately converted into a transmitted media that the Service can process; and

(c) the acknowledgement file received from the Service or from a Transmitter;

(4) upon request by the Service for the materials described in section 5.11(3) of this revenue procedure, make those materials available to the Service at the business address from which a return was accepted for transmitted media filing; and

(5) identify the paid preparer (if any) in the appropriate field of the

transmitted media return, in addition to ensuring that the paid preparer signed Form 8453-NR. If Form 8453-NR is not signed by the paid preparer, the 1040NR Return Originator must attach a copy of pages one and two of a completed Form 1040NR that includes the paid preparer's signature. These copies must be marked "COPY-DO NOT PROCESS" to prevent duplicate filings.

.12 A 1040NR Return Originator who is also the paid preparer of a transmitted media return must comply with § 1.6107-1(b). This section of the regulations describes the tax return materials that must be retained and the retention periods for these materials.

.13 If the transmitted media portion of a taxpayer's return is acknowledged as rejected by the Service, and the reason for the rejection cannot be rectified by making nonsubstantive changes as described in section 6.02(3) of this revenue procedure, the 1040NR Return Originator must notify the taxpayer within one work day by mail that the taxpayer's return has not been filed. If the taxpayer chooses to have the rejected return resubmitted on transmitted media, and the 1040NR Return Originator successfully works with the Project Office to correct the problems causing the return to be rejected, the return will be accepted as timely filed. A new Form 8453-NR may be required (see section 7 of this revenue procedure). However, even when no new Form 8453-NR is required, the Transmitter must submit a photocopy of the original Form 8453-NR with the rejected file or return and mark the photocopy "Retransmitted." If the Project Office determines that a transmitted media return cannot be accepted for processing or the taxpayer chooses not to have the rejected return resubmitted on transmitted media, the taxpayer must file a paper return. If the due date (with regard to any extensions of time to file) of the return has passed, the taxpayer must file a paper return within ten days of the rejection along with an explanation of why the return is being filed after the due date. A paper return filed in good faith under any of these circumstances will be accepted as timely filed.

.14 A 1040NR Return Originator must use the taxpayer's address in the transmitted media portion of the return. In addition, a 1040NR Return Originator must not put its address as the taxpayer's address in the transmitted media portion of the return.

.15 A Service Bureau must:

(1) deliver all transmitted media returns to a Transmitter or to the 1040NR Return Originator who gave the transmitted media returns to the Service Bureau within three days of receipt;

(2) retrieve the acknowledgement file from the Transmitter within one day of being informed of the receipt by the Transmitter;

(3) initiate the communication of the acknowledgement file to the 1040NR Return Originator (whether related or not) within one work day of retrieving the acknowledgement file;

(4) if the Service Bureau processes Form 8453-NR, send back to the 1040NR Return Originator any return and Form 8453-NR that needs correction, unless the correction is described in section 7.02(3) of this revenue procedure;

(5) accept tax return information only from a 1040NR Return Originator who is in good standing in the 1040NR Program;

(6) include its MTFIN and the 1040NR Return Originator's MTFIN in the transmission of all tax return information;

(7) retain each acknowledgement file received from a Transmitter until the end of the calendar year in which the transmitted media return was filed;

(8) if requested, serve as a contact point between its client 1040NR Return Originator and the Service; and

(9) if requested, provide the Service with a list of each client 1040NR Return Originator.

.16 A Transmitter must:

(1) transmit all transmitted media returns within ten days of receipt and forward the acknowledgement files to the 1040NR Return Originators or the Service Bureau within five days after receipt of the acknowledgments from the Service;

(2) match the acknowledgement file to the original transmission file and resubmit any return that was not acknowledged as accepted for processing after necessary corrections are made within seven days of receiving the acknowledgement file;

(3) contact the Project Office for assistance if a return has been rejected after three attempts, or if an acknowledgement is received for a return that was not in the original submission;

(4) ensure the security of all transmitted data;

(5) promptly correct any transmission error that causes a transmitted media return to be rejected; and

(6) retain an acknowledgement file received from the Service until the end of the calendar year in which the transmitted media return was filed.

(7) immediately contact the Project Office for further instructions if an acknowledgement of a transmitted media return's acceptance for processing has not been received by the Transmitter within 14 days of transmission or if a Transmitter receives an acknowledgement for a return that was not transmitted on the designated transmission.

.17 A Transmitter who provides transmission services to another 1040NR Filer must, in addition to the items covered in section 5.16 of this revenue procedure, also:

(1) only accept a transmitted media return for transmission to the Service from an accepted 1040NR Filer;

(2) provide each client with the acknowledgement file for the transmitted return within five days after receipt of the acknowledgment from the Service; and

(3) use its assigned MTFIN when filing returns.

.18 A Software Developer must:

(1) promptly correct any software error that causes a transmitted media return to be rejected; and

(2) promptly distribute any software correction made to its software packages to all 1040NR Filers utilizing these packages.

(3) not incorporate into its software a Service-assigned production password.

.19 In addition to the specific responsibilities described in this section, a 1040NR Filer must meet all the requirements of this revenue procedure to keep the privilege of participating in the 1040NR Program.

SECTION 6. PENALTIES

.01 Penalties for Disclosure or Use of Information.

(1) A 1040NR Filer, except a Software Developer, is a tax return preparer ("Preparer") under the definition of § 301.7216-1(b) of the Regulations on Procedure and Administration. A Preparer is subject to a criminal penalty for disclosure or use of tax return information, as described in

§ 301.7216-1(a). In general, that regulation provides that any preparer who discloses or uses any tax return information for a purpose other than preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of a tax return is guilty of a misdemeanor. In addition, § 6713 of the Internal Revenue Code provides for civil penalties that may be assessed against a preparer who makes an unauthorized disclosure or use of tax return information.

(2) Under § 301.7216-2(h), disclosure of tax return information among accepted 1040NR Filers for the purpose of preparing a return is permissible. For example, it is permissible for a 1040NR Return Originator to pass on tax return information to a Service Bureau and/or a Transmitter for the purpose of having a transmitted media return formatted and filed with the Service. However, if the tax return information is disclosed or used in any other way, a Service Bureau and or a Transmitter may be guilty of a misdemeanor as described in paragraph (1) above.

.02 Other Preparer Penalties.

(1) Preparer penalties may be asserted against an individual or firm who meets the definition of an income tax return preparer under §§ 7701(a)(36) and 301.7701-15. Examples of preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701-15(d), 1040NR Return Collectors, Service Bureaus, Software Developers, and Transmitters are not income tax return preparers for the purpose of assessing most preparer penalties as long as their services are limited to "typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund."

(3) If a 1040NR Return Collector, Service Bureau, Software Developer, or Transmitter alters the return information in a nonsubstantive way, this alteration will be considered to come under the "mechanical assistance" exception described in § 301.7701-15(d)-(1). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction that falls within one of the following tolerances:

(a) the Total Tax amount, Total Payments amount, Refund amount, or the Amount You Owe shown on Form 8453-NR differs from the corresponding amount on the transmitted media return by no more than \$7;

(b) the Total Income amount shown on Form 8453-NR differs from the corresponding amount on the transmitted media return by no more than \$25; or

(c) dropping cents and rounding to whole dollars.

(4) If a 1040NR Return Collector, Service Bureau, or Transmitter alters the return information in a substantive way, rather than having the taxpayer alter the return, the 1040NR Return Collector, Service Bureau, or Transmitter will be considered to be an income tax return preparer for purposes of § 7701(a)(36).

(5) If a 1040NR Return Collector, Service Bureau, Transmitter, or the product of a Software Developer, goes beyond mechanical assistance, any of these parties may be held liable for income tax return preparer penalties. Rev. Rul. 85-189, 1985-2 C.B. 341, describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties.

.03 In addition to the above specified provisions, the Service reserves the right to assert all appropriate civil and criminal penalties, including preparer, nonpreparer, and disclosure penalties, against a 1040NR Filer as warranted under the circumstances.

SECTION 7. FORM 8453-NR, U.S. NONRESIDENT ALIEN INCOME TAX DECLARATION FOR MAGNETIC MEDIA FILING

.01 Procedures for Completing Form 8453-NR.

(1) Form 8453-NR must be completed in accordance with the instructions for Form 8453-NR.

(2) The taxpayer's name, address, taxpayer identification number, tax return information, and direct deposit of refund information in the transmitted media submission must be identical to the information on the Form 8453-NR that the taxpayer signed and provided for submission to the Service.

(3) After the transmitted media return has been prepared and before the return is submitted, the taxpayer must

verify the information on the transmitted media return and on Form 8453-NR and sign Form 8453-NR. An easily readable file copy of the prepared return must be provided to the taxpayer at the time of signature.

(4) A 1040NR Filer must submit a Form 8453-NR to the Project Office with each magnetically or electronically filed return. A single Form 8453-NR (inscribed with the language "See attached Multiple Return Information Listing") may be used for a multiple return filing if the person who signs Form 8453-NR has authorization, either by a specific power of attorney or as a responsible representative or agent under § 1.6012-3(b) of the Income Tax Regulations, to sign each of the returns included in the multiple return filing. A person who makes a multiple return filing must attach to Form 8453-NR an information page(s) titled "Form 8453-NR for Multiple Returns—Tax Return Information Listing" at the top of the page(s). Below the title, the multiple return 1040NR Filer must provide his or her name and address. The next item on the page(s) must be a list that includes every taxpayer's name control, taxpayer identification number, and the information shown on lines one through five on Form 8453-NR, for each return included in a multiple return filing.

(5) If a 1040NR Filer functions as a 1040NR Return Originator, the 1040NR Filer must sign the 1040NR Return Originator's Declaration on Form 8453-NR.

(6) If the 1040NR Filer is also the paid preparer, the 1040NR Filer must check the "Paid Preparer" box and sign the 1040NR Return Originator Declaration on Form 8453-NR.

.02 Corrections to Form 8453-NR.

(1) If the 1040NR Return Originator makes changes to a transmitted media return after Form 8453-NR has been signed by the taxpayer, but before it is transmitted, the 1040NR Return Originator must have all the necessary parties described above sign a new Form 8453-NR with the corrections if either of the following applies:

(a) the "Total Tax" (Form 8453-NR, line 2), the "Refund" (Form 8453-NR, line 4), or the "Amount Owed" (Form 8453-NR, line 5) differs from the amount on the transmitted media return by more than \$7; or

(b) the "Total Income" (Form 8453-NR, line 1) differs from the

amount on the transmitted media return by more than \$25.

(2) A new Form 8453-NR is not required for a nonsubstantive change. A nonsubstantive change is limited to a correction within the above tolerances for an arithmetic error, transposition error, misplaced entry, or a spelling error. The incorrect nonsubstantive information must be neatly lined through on Form 8453-NR and the correct data entered next to the lined-through entry. Also, the initials or the name of the person making the correction must be entered.

(3) Dropping cents and rounding to whole dollars does not constitute a substantive change or alteration to the return unless the amount differs by more than the above tolerances. All rounding should be accomplished in accordance with the instructions in the Form 1040NR tax package.

.03 If the Service determines that a Form 8453-NR is missing, the 1040NR Return Originator must provide the Service with a replacement. A 1040NR Return Originator must also provide a copy of any Form(s) W-2, Wage and Tax Statement, W-2G, Certain Gambling Winnings, 1099R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and all other attachments to the Form 8453-NR.

.04 If a substitute Form 8453-NR is used, it must be approved by the Service prior to use. See Rev. Proc. 95-16, 1995-1 C.B. 525.

SECTION 8. OBLIGATIONS OF A 1040NR RETURN ORIGINATOR TO THE TAXPAYER

.01 A 1040NR Return Originator must:

(1) furnish the taxpayer with a complete paper copy of the transmitted media material that was transmitted to the Service. This information can be contained on a replica of an official form or on an unofficial form. However, on an unofficial form, data entries must be referenced to the line numbers on an official form;

(2) provide the taxpayer with a copy of Form 8453-NR and, in the case of a prepared or corrected return, the non-transmitted media portion of the taxpayer's return;

(3) advise the taxpayer to retain a complete copy of the return and any supporting material;

(4) advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the Philadelphia Service Center;

(5) upon request, provide the taxpayer with the date the transmitted media portion of the taxpayer's return was acknowledged as accepted for processing by the Service; and

(6) inform the taxpayer that the address reported on the transmitted media portion of the return, once processed, will be used to update the taxpayer's address of record. The Internal Revenue Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's "last known address" under the Internal Revenue Code and for refunds of overpayments of tax (unless otherwise specifically directed by the taxpayer, such as by Direct Deposit). See Rev. Proc. 90-18, 1990-1 C.B. 491, for additional information about "last known address."

.02 A 1040NR Return Originator should advise the taxpayer to wait at least three weeks from the acceptance date of the transmitted media tax return before contacting the Service for the status of a refund. If such contact is necessary, the taxpayer should be advised to use the IRS Tele-Tax system.

SECTION 9. DIRECT DEPOSIT OF REFUNDS

.01 The Service will ordinarily process a request for Direct Deposit but reserves the right to issue a paper refund check.

.02 The Service does not guarantee a specific date by which a refund will be directly deposited into the taxpayer's financial institution account. The taxpayer's account must be with a financial institution located in the United States.

.03 Neither the Service nor the Financial Management Service (FMS) is responsible for the misapplication of a Direct Deposit that is caused by error, negligence, or malfeasance on the part of the taxpayer, 1040NR Filer, financial institution, or any of their agents.

.04 A 1040NR Return Originator must:

(1) ensure that the taxpayer is aware of all the general information regarding a Direct Deposit;

(2) not charge a separate fee for Direct Deposit;

(3) accept any Direct Deposit election to any eligible financial institution designated by the taxpayer;

(4) ensure that the taxpayer is eligible to choose Direct Deposit;

(5) verify that the Direct Deposit information requested on Part II of Form 8453-NR was entered correctly and that the information entered is the information transmitted on the transmitted media portion of the return;

(6) caution the taxpayer that once a transmitted media return has been accepted for processing by the Service:

(a) the Direct Deposit election cannot be rescinded;

(b) the Routing Transit Number of the financial institution cannot be changed; and

(c) the taxpayer's account number cannot be changed; and

(7) advise the taxpayer to follow the procedures in section 8.02 of this revenue procedure if there is a need to contact the Service about a Direct Deposit request.

SECTION 10. BALANCE DUE RETURNS

.01 A magnetically or electronically filed balance due return is submitted to the Philadelphia Service Center in the same manner that a refund or zero balance return is submitted. A balance due return is not complete unless and until the Service receives a Form 8453-NR completed and signed by the taxpayer.

.02 A taxpayer who magnetically or electronically files a balance due return must make a full and timely payment of any tax that is due. Failure to make full payment of any tax that is due on or before April 15, 1996 (for individuals who were employees and received wages subject to U.S. income tax withholding), or June 15, 1996 (for individuals who did not receive wages as an employee that were subject to U.S. income tax withholding), will result in the imposition of interest and may result in the imposition of penalties.

SECTION 11. ADVERTISING STANDARDS FOR A 1040NR FILER AND A FINANCIAL INSTITUTION

.01 A 1040NR Filer must comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treas-

ury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. In addition, advertising must not imply a special relationship with the Service, FMS, or the Treasury Department. Any claims concerning faster refunds by virtue of transmitted media filing must be consistent with the language in official Service publications.

.02 A 1040NR Filer must adhere to all relevant federal, state, and local consumer protection laws.

.03 A 1040NR Filer must not use the Service's name, "Internal Revenue Service," or "IRS" within a firm's name.

.04 A 1040NR Filer must not use improper or misleading advertising in relation to the 1040NR Program (including the time frames for refunds).

.05 Use of Direct Deposit name and logo.

(1) The name "Direct Deposit" will be used with initial capital letters or all capital letters.

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy.

(3) The color or size of the Direct Deposit logo/graphic may be changed when used in advertising pieces.

.06 Advertising materials must not carry the FMS, IRS, or other Treasury seals.

.07 Advertising for a cooperative transmitted media return project (public/private sector) must clearly state the names of all cooperating parties.

.08 If a 1040NR Filer uses radio or television broadcasting to advertise, the broadcast must be pre-recorded. The 1040NR Filer must keep a copy of the pre-recorded advertisement for a period of at least 36 months from the date of the last transmission or use.

.09 If a 1040NR Filer uses direct mail or fax communications to advertise, the 1040NR Filer must retain a copy of the actual mailing or fax, along with a list or other description of persons to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.10 Acceptance to participate in the 1040NR Program does not imply en-

dorsement by the Service or FMS of the software or quality of services provided.

SECTION 12. MONITORING AND SUSPENSION OF A 1040NR FILER

.01 The Service will monitor a 1040NR Filer for conformity with this revenue procedure. The Service can immediately suspend, without notice, a 1040NR Filer from the 1040NR Program. However, in most circumstances, a suspension from participation in the 1040NR Program is effective as of the date of the letter informing the 1040NR Filer of the suspension. Before suspending a 1040NR Filer, the Service may issue a warning letter that describes specific corrective action for deviations from this revenue procedure.

.02 The Service will monitor the timely receipt of Forms 8453-NR, as well as their overall legibility.

.03 The Service will monitor the quality of the 1040NR Filer's submissions throughout the filing season. The Service will also monitor transmitted media returns and tabulate rejections, errors, and other defects. If quality deteriorates, the 1040NR Filer may receive a warning from the Service.

.04 The Service will monitor complaints about a 1040NR Filer and issue a warning or suspension letter as appropriate.

.05 The Service reserves the right to suspend the transmitted media filing privilege of any 1040NR Filer who violates any provision of this revenue procedure. Generally, the Service will advise a suspended 1040NR Filer concerning the requirements for reacceptance into the 1040NR Program. The following reasons may lead to a warning letter and/or suspension of a 1040NR Filer from the 1040NR Program (this list is not all-inclusive):

(1) the reasons listed in section 4.04 of this revenue procedure;

(2) deterioration in the format of individual submissions;

(3) unacceptable cumulative error or rejection rate;

(4) untimely received, illegible, missing, or unapproved substitute Forms 8453-NR;

(5) stockpiling of returns while participating in the 1040NR Program;

(6) failure on the part of a Transmitter to provide clients with acknowledgement files within five days after receipt from the Service;

(7) significant complaints about a 1040NR Filer's performance in the 1040NR Program;

(8) failure on the part of a 1040NR Filer to ensure that no other entity uses its assigned MTFIN;

(9) having more than one MTFIN for the same business entity at the same location (the business entity is generally the entity that reports on its return the income derived from transmitted media filing), unless the Service has issued more than one MTFIN to a business entity;

(10) failure on the part of a 1040NR Filer to cooperate with the Service's efforts to monitor 1040NR Filers and investigate transmitted media filing abuse;

(11) failure on the part of a 1040NR Filer to properly use the standard/non-standard W-2 indicator;

(12) failure on the part of a Transmitter to use its assigned MTFIN when filing returns;

(13) failure on the part of the Transmitter to include a Service Bureau's MTFIN in the transmission of a return submitted by a Service Bureau;

(14) failure on the part of a Service Bureau or a Transmitter to include the 1040NR Return Originator's MTFIN as part of a return that the 1040NR Return Originator submits to the Service Bureau or the Transmitter;

(15) violation of the advertising standards described in section 11 of this revenue procedure;

(16) failure to maintain and make available records as described in section 5.11(3) and (4) of this revenue procedure;

(17) accepting a tax return for transmitted media filing either directly or indirectly from a person (other than the taxpayer who is submitting his or her return) who is not in the 1040NR Program;

(18) submitting the transmitted media portion of the return with information that is not identical to the information on the Form 8453-NR;

(19) failure to timely pay any applicable fees, as implemented by subsequent guidance; or

(20) filing returns before February 15, 1996, with any form of substitute Form W-2 or wage and tax documentation.

.06 The Service will list in the Internal Revenue Bulletin, district office listings, district office newsletters,

and on the EFS Bulletin Board, the name of any entity that is suspended from the 1040NR Program and the effective date of that suspension.

.07 A suspension from participation in the 1040NR Program or a revocation of the privilege to participate in the 1040NR Program is effective as of the date of the letter informing the 1040NR Filer of the suspension or revocation.

.08 Most denials and suspensions of participation in the 1040NR Program will result in:

(1) a rejected applicant not being reconsidered for participation in the 1040NR Program for at least two filing seasons; and

(2) a suspended 1040NR Filer not being reconsidered for participation in the 1040NR Program for at least two years. For purposes of this section 12.08, two years means the remaining months in the calendar year of denial of participation or suspension and the following two calendar years.

SECTION 13. ADMINISTRATIVE REVIEW PROCESS FOR DENIAL OF PARTICIPATION IN THE 1040NR PROGRAM

.01 An applicant who has been denied participation in the 1040NR Program has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 In response to the submission of a Form MAR-8980, the Service will either (1) accept an applicant into the 1040NR Program, or (2) issue a proposed letter of denial that explains to the applicant why the Service proposes to reject the application to participate in the 1040NR Program.

.03 An applicant who receives a proposed letter of denial may respond, in writing, to the Project Office. The applicant's response must address the Project Office's explanation for proposing the denial to participate. The Project Office must receive the applicant's response within 30 days of the date of the proposed letter of denial.

.04 Upon receipt of an applicant's written response, the Project Office will reconsider its proposed letter of denial. The Project Office may (1) withdraw its proposed letter of denial and admit the applicant into the 1040NR Program, or (2) finalize its proposed letter of denial and issue it to the applicant.

.05 If an applicant receives a final letter from the Project Office that denies the applicant participation in the 1040NR Program, the applicant is entitled to an appeal, in writing, to the Director of Practice.

.06 The appeal must be filed with the Project Office within 30 days of the date of the denial letter. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed. In addition, the applicant must include a copy of the applicant's Form MAR-8980 and a copy of the denial letter.

.07 The Project Office, upon receipt of a written appeal to the Director of Practice, will forward to the Director of Practice its file on the applicant and the materials described in section 13.06 that the applicant has submitted to the Project Office. The Project Office will forward to the Director of Practice these materials within 15 days of receipt of the applicant's appeal to the Director of Practice.

.08 Failure to respond within the 30-day periods described in sections 13.03 and 13.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

SECTION 14. ADMINISTRATIVE REVIEW PROCESS FOR SUSPENSION FROM THE 1040NR PROGRAM

.01 A 1040NR Filer who has been suspended from participation in the 1040NR Program has the right to an administrative review. During the administrative review process, the suspension remains in effect.

.02 If a 1040NR Filer receives a suspension letter from the Project Office, the 1040NR Filer is entitled to an appeal, in writing, to the Director of Practice.

.03 The 1040NR Filer must ensure that the Project Office receives the 1040NR Filer's written appeal for review by the Director of Practice within 30 days of the date of the suspension letter. The 1040NR Filer's written appeal for review must contain detailed reasons, with supporting documentation, for reversal of the suspension. In addition, the 1040NR Filer must include a copy of its Form MAR-8980 and a copy of the suspension letter.

.04 The Project Office, upon receipt of a written appeal to the Director of Practice, will forward to the Director of Practice its file on the 1040NR Filer and the material described in section 14.03 of this revenue procedure that the 1040NR Filer has submitted to the Project Office. The Project Office will forward to the Director of Practice these materials within 15 days of the receipt of a 1040NR Filer's written request for appeal.

.05 Failure to appeal within the 30-day period described in section 14.03 of this revenue procedure irrevocably

terminates a 1040NR Filer's right to appeal the decision to suspend the 1040NR Filer from participation in the 1040NR Program.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 95-22, 1995-1 C.B. 686, is superseded.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective May 31, 1996.

SECTION 17. PROJECT OFFICE INFORMATION

All questions regarding this revenue procedure should be directed to:

Internal Revenue Service
Philadelphia Service Center
ATTN: DP-115-Magnetic Media
Project Office
11601 Roosevelt Blvd.
Philadelphia, PA 19154
U.S.A.

The telephone number of this office is (215) 516-7533 (not a toll-free number) or 800-829-6945 (a toll-free number).