



August 2022

## The IRS Grants Penalty Relief for 2019 and 2020, But...

On Aug. 24, 2022, the IRS issued [Notice 2022-36](#), which provides penalty relief to taxpayers for certain late-filed 2019 and 2020 tax returns and information returns, but this relief is only afforded to those who file the eligible returns **on or before Sept. 30, 2022, and the relief does not apply to all types of returns**. If the late returns are filed before Sept. 30, 2022, the IRS will automatically waive all applicable penalties provided in the Notice. The taxpayer will not be required to make a request for relief or submit a reasonable cause statement for the late filing. If the IRS already assessed the penalties for those years, then the Notice provides that the penalties will be abated, and refunds will be issued.

Taxpayers will receive relief only for penalties specifically listed in Notice 2022-36. Penalties eligible for relief include penalties for failure to file the following forms:

- Form 1040, *U.S. Individual Income Tax Return*; Form 1040-C, *U.S. Departing Alien Income Tax Return*; Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*; Form 1040-NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*; Form 1040 (PR), *Federal Self-Employment Contribution Statement for Residents of Puerto Rico*; Form 1040-SR, *U.S. Tax Return for Seniors*; and Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*

- Form 1041, *U.S. Income Tax Return for Estates and Trusts*; Form 1041-N, *U.S. Income Tax Return for Electing Alaska Native Settlement Trusts*; and Form 1041-QFT, *U.S. Income Tax Return for Qualified Funeral Trusts*
- Form 1120, *U.S. Corporation Income Tax Return*; Form 1120-S, *U.S. Income Tax Return for an S Corporation*; Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*; Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*; Form 1120-FSC, *U.S. Income Tax Return of a Foreign Sales Corporation*; Form 1120-H, *U.S. Income Tax Return for Homeowners Associations*; Form 1120-L, *U.S. Life Insurance Company Income Tax Return*; Form 1120-ND, *Return for Nuclear Decommissioning Funds and Certain Related Persons*; Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*; Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*; Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*; Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*; and Form 1120-SF, *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*
- Form 1065, *U.S. Return of Partnership Income*
- Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*
- Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*; and Form 990-T, *Exempt Organization Business Income Tax Return (and Proxy Tax Under Section 6033(e))*
- Form 5471, *Information Return of U.S. Person With Respect to Certain Foreign Corporations*
- Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*
- Form 3520, *Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*
- Form 3520-A, *Annual Information Return of Foreign Trust with a U.S. Owner (Under section 6048(b))*

Further, the Notice provides relief to banks and other businesses for failure to timely file certain information returns under Internal Revenue Code section 6721(a)(2)(A) (e.g., Form 1099 series). To be eligible for penalty relief, the relevant 2019 information returns must have been filed on or before Aug. 1, 2020, and, for 2020 information returns, must have been filed on or before Aug. 1, 2021.

Most notably, Notice 2022-36 does not provide penalty relief for failure to pay tax penalties, failure to file Form 8938, *Statement of Specified Foreign Financial Assets*, or failure to file FBARs (FinCEN Report 114). In addition, penalty relief does not apply to any penalty that is: (1) subject to fraud; (2) included in an accepted offer in compromise; or (3) included in a closing agreement or finally determined judicial proceeding.

The penalty relief under Notice 2022-36 is designed to continue to help taxpayers affected by the COVID-19 pandemic. Further, the penalty relief should allow the IRS to refocus its resources on processing backlogged tax returns and responding to taxpayer correspondence after the challenges the IRS faced while operating during a pandemic.

Taxpayers who have failed to file 2019 and/or 2020 tax or information returns may want to contact a tax professional to see if they are eligible for penalty relief under Notice 2022-36.

## Authors

This GT Alert was prepared by:

- [Barbara T. Kaplan](#) | +1 212.801.9250 | [kaplanb@gtlaw.com](mailto:kaplanb@gtlaw.com)
- [Scott E. Fink](#) | +1 212.801.6955 | [finks@gtlaw.com](mailto:finks@gtlaw.com)
- [Shira Peleg](#) | +1 212.801.6754 | [pelegs@gtlaw.com](mailto:pelegs@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.<sup>¬</sup> Houston. Las Vegas. London.\* Long Island. Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.ª Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ¬Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ªGreenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojijimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*