



IRS advises that improperly forgiven Paycheck Protection Program loans are taxable

IR-2022-162, September 21, 2022

WASHINGTON — The Internal Revenue Service recently issued [guidance addressing improper forgiveness of a Paycheck Protection Program loan \(PPP loan\)](#) [PDF](#).

The guidance confirms that, when a taxpayer's loan is forgiven based upon misrepresentations or omissions, the taxpayer is not eligible to exclude the forgiveness from income and must include in income the portion of the loan proceeds that were forgiven based upon misrepresentations or omissions. Taxpayers who inappropriately received forgiveness of their PPP loans are encouraged to take steps to come into compliance by, for example, filing amended returns that include forgiven loan proceed amounts in income.

"This action underscores the Internal Revenue Service's commitment to ensuring that all taxpayers are paying their fair share of taxes," said IRS Commissioner Chuck Rettig. "We want to make sure that those who are abusing such programs are held accountable, and we will be considering all available treatment and penalty streams to address the abuses."

Many PPP loan recipients who received loan forgiveness were qualified and used the loan proceeds properly to pay eligible expenses. However, the IRS has discovered that some recipients who received loan forgiveness did not meet one or more eligibility conditions. These recipients received forgiveness of their PPP loan through misrepresentation or omission and either did not qualify to receive a PPP loan or misused the loan proceeds.

The PPP loan program was established by the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to assist small US businesses that were adversely affected by the COVID-19 pandemic in paying certain expenses. The PPP loan program was further extended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act.

Under the terms of the PPP loan program, lenders can forgive the full amount of the loan if the loan recipient meets three conditions.

1. The loan recipient was eligible to receive the PPP loan. An eligible loan recipient:
 - is a small business concern, independent contractor, eligible self-employed individual, sole proprietor, business concern, or a certain type of tax-exempt entity;
 - was in business on or before February 15, 2020; and

- had employees or independent contractors who were paid for their services, or was a self-employed individual, sole proprietor or independent contractor.
2. The loan proceeds had to be used to pay eligible expenses, such as payroll costs, rent, interest on the business' mortgage, and utilities.
 3. The loan recipient had to apply for loan forgiveness. The loan forgiveness application required a loan recipient to attest to eligibility, verify certain financial information, and meet other legal qualifications.

If the three conditions above are met, then under the PPP loan program the forgiven portion is excluded from income. If the conditions are not met, then the amount of the loan proceeds that were forgiven but do not meet the conditions must be included in income and any additional income tax must be paid.

To report tax-related illegal activities relating to PPP loans, submit [Form 3949-A, Information Referral](#) [PDF](#). Taxpayers should also report instances of IRS-related phishing attempts and fraud to the [Treasury Inspector General for Tax Administration](#) [↗](#) at [800-366-4484](tel:800-366-4484)

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**Office of Chief Counsel
Internal Revenue Service
memorandum**

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subject: Proper Treatment of Improperly Forgiven PPP Loans

This Chief Counsel Advice responds to your request for assistance. You have requested advice on whether a taxpayer whose Paycheck Protection Program (PPP) loan was forgiven even though the taxpayer did not qualify for the forgiveness must include the PPP loan proceeds in gross income under section 61 of the Internal Revenue Code.

This advice may not be used or cited as precedent.

Issue

If a taxpayer makes one or more representations that he or she satisfies the conditions for forgiveness of a PPP loan under 15 U.S.C. §§ 636m and 636(a)(37)(J) (“qualifying forgiveness”), but does not factually satisfy the conditions for a qualifying forgiveness¹, and as a result, has the PPP loan forgiven improperly, may the taxpayer exclude the amount of the forgiven loan from gross income under 15 U.S.C. § 636m(i) or § 276(b)(1) of the COVID-related Tax Relief Act of 2020 (CTRA 2020)?

¹ A variety of fact patterns may establish that the taxpayer was not eligible for forgiveness under the statute and related regulatory guidance. For example, the taxpayer may have used the funds for personal expenditures. No implication is intended from the facts in the Situation presented below that it limits the reasons why a particular forgiveness is not a qualifying forgiveness.

Conclusion

If a taxpayer who does not factually satisfy the conditions for a qualifying forgiveness causes its lender to forgive the PPP loan by inaccurately representing that the taxpayer satisfies them, the taxpayer may not exclude the amount of the forgiven loan from gross income under 15 U.S.C. § 636m(i) or section 276(b)(1) of the CTRA 2020.

Background on the Paycheck Protection Program Loans

A. PPP loans

PPP loans are loans made in accordance with the terms, conditions and processes under the PPP. There were two rounds, or draws, of PPP loans. The first was provided under section 1102 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020) (CARES Act), to assist small businesses in the United States adversely affected by the COVID-19 pandemic in paying payroll costs and other eligible expenses. The second was provided under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. No. 116-260, div. N, title III, 134 Stat. 1993 (December 27, 2020) (Economic Aid Act), which amended and extended the existing PPP provisions. The PPP is administered by the Small Business Administration (SBA) as part of its "7(a) Loan Program" under § 7(a) of the Small Business Act (15 U.S.C. § 636(a)). For both rounds of PPP loans (collectively, "covered loans"), the lender may forgive, and the SBA may guarantee, the full principal amount, if certain criteria are met as described below. See 15 U.S.C. §§ 636(a)(36), (a)(37), and 636m.

To implement the PPP, the SBA issued regulatory interim final rules (IFRs) in the Federal Register in 2020 and 2021, including the Consolidated IFR implementing updates to the PPP ("Consolidated IFR"),² and the IFR on Loan Forgiveness Requirements and Loan Review Procedures ("Loan Forgiveness IFR").³ The Consolidated IFR provides general rules governing covered loans and qualifying forgiveness of those loans, and the Loan Forgiveness IFR further details the SBA rules on qualifying forgiveness.

Lenders participating in the PPP may make PPP loans, fully guaranteed by the SBA, to eligible recipients only under specified terms, conditions and processes of the program. An "eligible recipient"⁴ is an individual or entity that is eligible to receive a covered loan. A prospective recipient is eligible to receive a covered loan if the recipient (i) is a small business concern (as determined by the SBA), independent contractor, eligible self-employed individual, sole proprietor, business concern, or a certain type of tax-exempt

² 86 Fed. Reg. 3692 (January 14, 2021).

³ 86 Fed. Reg. 8283 (Feb. 5, 2021).

⁴ For purposes of PPP Second Draw Loans, the term "eligible entity" is substituted for "eligible recipient." See 15 U.S.C. § 636(a)(37)(A)(i).

organization as specified by the authorizing statutes; and (ii) was in business on February 15, 2020, and either had employees or independent contractors whom the recipient paid for services or was an eligible self-employed individual, sole proprietor, or independent contractor.⁵

PPP loan proceeds may be used only for “eligible expenses,” namely, payroll costs, rent, interest on the business’s mortgage, utilities, and other specified operations expenditures, subject to repayment and additional liability if the proceeds are misused.⁶ The application for a PPP loan requires that a prospective recipient attest to eligibility, verify certain financial information, and meet other legal qualifications.⁷ The SBA allows lenders to rely on prospective recipients’ certifications and documentation to determine whether to originate PPP loans. Similarly, the SBA allows lenders to rely on loan recipients’ certifications and documentation in determining whether to forgive PPP loans. Lenders are held harmless for recipients’ failure to comply with program criteria if they act in good faith and comply with relevant statutory and regulatory requirements.⁸

A PPP loan bears a non-compounding interest rate of one percent and matures in five years.⁹ The recipient must generally make the first repayment in 24 weeks after the loan disbursement. If, however, the recipient applies for forgiveness of any portion of the loan within 10 months following the 24 weeks after the disbursement, the repayment of the principal (and interest) is not due unless and until the SBA notifies the recipient that the forgiveness request is rejected.¹⁰

B. Qualifying forgiveness of a PPP loan

Qualifying forgiveness occurs in the PPP if the PPP loan recipient satisfies the forgiveness criteria set forth in 15 U.S.C. §§ 636m and 636(a)(37)(J), the participating lender forgives the PPP loan in whole or in part, and the forgiveness amount does not exceed the full principal amount of the PPP loan. While the term “qualifying forgiveness” does not appear in the statute or regulations, for purposes of this memorandum, it reflects PPP loan forgiveness that is authorized by 15 U.S.C. §§ 636m and 636(a)(37)(J) and that is described in the aforementioned IFRs. To receive qualifying forgiveness on a PPP loan, at least 60 percent of the PPP loan amount must be used for payroll costs, while up to 40 percent of the PPP loan amount may be used for other specified costs.¹¹ In addition, the qualifying forgiveness amount may not exceed the sum of specified costs that were incurred and paid during a covered

⁵ Consolidated IFR, Part III, B.1.a through 1.g., 2.a. through 2.c., 86 Fed. Reg. 3692, 3695-3698. See also 15 U.S.C. § 636(a)(36)(D), (a)(37)(A)(iv).

⁶ Consolidated IFR, Part III, B.11, 86 Fed. Reg. 3692, 3704-3705. See also 15 U.S.C. § 636(a)(36)(F).

⁷ Consolidated IFR, Part III, B.12.ix, 86 Fed. Reg. 3692, 3706. See also 15 U.S.C. § 636(a)(36)(G).

⁸ Consolidated IFR, Part III, A, C.3, 86 Fed. Reg. 3692, 3694, 3707-3708. See also 15 U.S.C. § 636(a)(36)(G).

⁹ Consolidated IFR, Part III, B.5 and B.6, 86 Fed. Reg. 3692, 3703.

¹⁰ Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3703-3704.

¹¹ Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3706-3707. See also 15 U.S.C. § 636m(d)(8).

period.¹² The specified costs consist of payroll costs, interest on covered mortgage obligations, covered rent obligations, covered utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures.¹³

To receive qualifying forgiveness of a PPP loan, a PPP loan recipient must submit the application, including documentation and representations required by the statute and by the SBA.¹⁴ To request forgiveness of a PPP loan, the loan recipient must attest to eligibility for forgiveness, including verifying that the loan proceeds were properly expended on eligible expenses and that the amount applied for forgiveness satisfies all the limitations relating to specified costs, and meet other legal requirements.

Once the lender grants qualifying forgiveness to a PPP loan recipient in compliance with the terms, conditions and processes of the PPP, the lender may treat the amount forgiven as "canceled indebtedness." The SBA, as the guarantor, is required to remit the same amount to the lender within 90 days from the date when the lender approves the qualifying forgiveness.¹⁵ If the SBA later determines that a given forgiveness was not a qualifying forgiveness, the SBA may seek repayment of the loan.¹⁶ Civil and criminal remedies (including recoupment of the improperly forgiven amount) are also available in coordination with the Department of Justice. See, e.g., SBA Inspector General Report no. 22-13 (May 26, 2022).

Section § 636m(i)(1) of the United States Code, Title 15, provides that "no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness described in subsection (b)". Similarly, § 276(b)(1) of the CTRA 2020, which was enacted as Subtitle B of Division N of the Consolidated Appropriations Act, 2021, Public Law 116-260, provides that "no amount shall be included in the gross income of an eligible entity (within the meaning of [15 U.S.C. § 636(a)(37)(J)]) by reason of forgiveness of indebtedness described in clause (ii) of such paragraph, . . . " 134 Stat. 1182, 1979 (Dec. 27, 2020).

Situation

Taxpayer X applied for and received a first draw PPP loan in 2020. Taxpayer X did not use the loan proceeds for eligible expenses and applied for forgiveness of the PPP loan in 2020 as if she were entitled to a qualifying forgiveness. In the loan forgiveness

¹² Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3706-3707; IFR on Loan Forgiveness, Part IV, 86 Fed. Reg. 8283, 8286-8294. See also 15 U.S.C. § 636m(a)(4)(covered period), (b). For the PPP Second Draw Loans, the same terms and conditions of qualifying forgiveness are provided at 15 U.S.C. § 636(a)(37)(J).

¹³ Consolidated IFR, Part III, B.9, 86 Fed. Reg. 3692, 3706-3707; IFR on Loan Forgiveness, Part IV, 1, 3 and 4, 86 Fed. Reg. 8283, 8286-8290. See also 15 U.S.C. § 636m(b).

¹⁴ IFR on Loan Forgiveness, Part IV, 2, 86 Fed. Reg. 8283, 8287-8288. See also 15 U.S.C. § 636m(e).

¹⁵ IFR on Loan Forgiveness, Part IV, 2.a, 86 Fed. Reg. 8283, 8287-8288. See also 15 U.S.C. § 636m(c)(3).

¹⁶ IFR on Loan Forgiveness, Part V, 1.e., 86 Fed. Reg. 8283, 8295.

application submitted to the PPP lender, Taxpayer X failed to include all relevant facts that would indicate that she was not eligible for a qualifying forgiveness of the PPP loan. Based on the omissions and misrepresentations on that application, Taxpayer X received forgiveness of her PPP loan from the lender.

Law and Analysis

There is no accession to wealth under section 61(a) upon receipt of PPP loan proceeds, as the PPP loan is issued by a bank, includes an interest rate and maturity date, and includes an obligation for the eligible recipient to repay. See *Commissioner v. Tufts*, 461 U.S. 300, 307 (1983); *Commissioner v. Indianapolis Power & Light Co.*, 493 U.S. 203, 207-8 (1990). Once a participating lender forgives a loan originated under the PPP, however, the recipient of the loan proceeds enjoys an accession to wealth in the amount of the loan that is forgiven. Under general principles of Federal income taxation, the amount forgiven must be included in the loan recipient's gross income. However, section 636m(i) of the United States Code, Title 15, and § 276(b)(1) of the CTRA 2020 provide express exceptions to the rule that forgiveness of a PPP loan constitutes gross income.

Thus, a taxpayer who received a PPP loan that is forgiven may exclude the forgiven amount of the PPP loan from gross income if the forgiveness is described in section 636m(i) and § 276(b)(1) of the CTRA 2020. These exclusions apply only to a qualifying forgiveness of a PPP loan. Forgiveness of a PPP loan is a qualifying forgiveness only if the use of the loan proceeds satisfies the conditions relating to specified costs (as described in 15 U.S.C. § 636m(b), (d)). To receive a qualifying forgiveness, the loan recipient must apply for the forgiveness in accordance with the specific procedures set forth in the statute and associated regulations.

Failure to meet these conditions means that there is no qualifying forgiveness, and thus the exclusions would not apply to the forgiven PPP loan. As the Second Circuit concludes in discussing the forgiveness provision of the PPP (15 U.S.C. § 636m) in *Springfield Hosp., Inc.*, 28 F.4th 403, 424 (2nd Cir. 2022):

[F]orgiveness is neither automatic nor guaranteed. A borrower must apply for forgiveness, which will only be granted if specified criteria are met, see 15 U.S.C. § 636m(b)–(d), and the CARES Act places several additional conditions upon obtaining forgiveness [including that the funds are “used for statutorily authorized purposes”].¹⁷

¹⁷ The Court of Appeals for the Second Circuit reversed and vacated the bankruptcy court's decision that the PPP was a grant program for purposes of section 525(a) of the Bankruptcy Code, an anti-discrimination provision which applies to government “grants.” The Second Circuit analyzed the PPP to determine whether the PPP loans were “loans” or “grants” for purposes of the Bankruptcy Code, and concluded that “[the] forgiveness option, favorable as it is, cannot alter the structure of what a loan forgiveness program fundamentally is—namely, a program to forgive *loans*.” 28 F.4th at 424 (emphasis in original).

Turning to the Situation described above, because the forgiveness of Taxpayer X's PPP loan was based on omissions and misrepresentations, the loan that Taxpayer X received did not fall within the scope of loans that could be forgiven under 15 U.S.C. § 636m. The forgiveness of that loan accordingly did not constitute a qualifying forgiveness described in 15 U.S.C. § 636m, and may not be excluded from Taxpayer X's gross income under 15 U.S.C. § 636m(i). The exclusion provision applies only to a PPP loan that meets the conditions of a qualifying forgiveness. Similarly, the exclusion applies only if the loan recipient is an eligible recipient. Thus, even if the loan forgiveness is otherwise a qualifying forgiveness, the exclusion is inapplicable if the loan recipient is not an eligible recipient.¹⁸ Because section 636m(i) does not apply to forgiveness of her PPP loan, Taxpayer X must include the forgiven amount in her gross income. This result follows from the application of the general principles of Federal income taxation to the amount forgiven in determining the proper tax treatment.¹⁹

Section 61(a) generally provides that “gross income means all income from whatever source derived.” This result applies to all payments that are “undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion” constitute taxable income. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). In 2020, the year of forgiveness and release from the obligation to repay, Taxpayer X had undeniable accessions to wealth, clearly realized, and over which she had complete dominion under the principles of *Glenshaw Glass*. Furthermore, notwithstanding the ability of the SBA to pursue repayment in the case of misuse of funds, Taxpayer X retained the PPP loan proceeds in 2020 under a claim of right.

The claim of right doctrine derives originally from the Supreme Court decision in *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932). The court there stated that “[i]f a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.” *Id.* at 424. This doctrine applies regardless of whether the taxpayer acquires the proceeds lawfully; see *James v. United States*, 366 U.S. 213, 219 (1961) (applying the *North American Oil Consolidated* approach “[w]hen a taxpayer acquires earnings, lawfully or unlawfully, without the consensual recognition, express or implied, of an obligation to repay and without restriction as to their disposition”). The ability of the SBA to pursue repayment of the improperly forgiven PPP loan does not preclude the application of the claim of right doctrine to Taxpayer X in 2020. See *United States v. Lewis*, 340 U.S. 590 (1951)

¹⁸ See 15 USC § 636m(i)(1); IFR on Loan Forgiveness, Part V, 1.e., 86 Fed. Reg. 8283, 8295. The same is true for eligible entities in the case of PPP Second Draw Loans. See § 276(b)(1) of the CTRA 2020.

¹⁹ If the SBA later determines that Taxpayer X had her loan improperly forgiven and, consequently, Taxpayer X pays back the SBA in a later year, the repayment that Taxpayer X makes may result in a deductible expense under section 162 or a deductible loss under section 165 for the later year. Whether Taxpayer X may claim a deduction under section 162 or 165 for the later year depends on all facts and circumstances.

(taxpayer received a bonus in 1944 and was required to repay the bonus in 1946 after being informed the original payment was erroneous; the court found that the taxpayer held the bonus under a claim of right in 1944 and rejected his argument that he could amend his 1944 return to reflect the subsequent repayment).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

If you have any questions, please call M. Duke Osborne at (202) 317-7006.



Reminder: File 2019 and 2020 returns by Sept. 30 to get COVID penalty relief

IR-2022-163, September 22, 2022

WASHINGTON — The Internal Revenue Service today reminded struggling individuals and businesses, affected by the COVID-19 pandemic, that they may qualify for late-filing penalty relief if they file their 2019 and 2020 returns by September 30, 2022.

Besides providing relief to both individuals and businesses impacted by the pandemic, this step is designed to allow the IRS to focus its resources on processing backlogged tax returns and taxpayer correspondence to help return to normal operations for the 2023 filing season.

"We thought carefully about the type of penalties, the period covered and the duration before granting this penalty relief. We understand the concerns being raised by the tax community and others about the September 30 penalty relief deadline," said IRS Commissioner Chuck Rettig. "Given planning for the upcoming tax season and ongoing work on the inventory of tax returns filed earlier this year, this penalty relief deadline of September 30 strikes a balance. It is critical to us to not only provide important relief to those affected by the pandemic, but this deadline also allows adequate time to prepare our systems and our workstreams to serve taxpayers and the tax community during the 2023 filing season."

The relief, [announced](#) last month, applies to the failure-to-file penalty. The penalty is typically assessed at a rate of 5% per month, up to 25% of the unpaid tax, when a federal income tax return is filed late. This relief applies to forms in both the Form 1040 and 1120 series, as well as others listed in [Notice 2022-36](#), posted on IRS.gov.

For anyone who has gotten behind on their taxes during the pandemic, this is a great opportunity to get caught up. To qualify for relief, any eligible income tax return must be filed on or before September 30, 2022.

Those who file during the first few months after the September 30 cutoff will still qualify for partial penalty relief. That's because, for eligible returns filed after that date, the penalty starts accruing on October 1, 2022, rather than the return's original due date. Because the penalty accrues, based on each month or part of a month that a return is late, filing sooner will limit any charges that apply.

Unlike the failure-to-file penalty, the failure-to-pay penalty and interest will still apply to unpaid tax, based on the return's original due date. The failure-to-pay penalty is normally 0.5% (one-half-of-one percent) per month. The interest rate is currently 5% per year, compounded daily, but that rate is due to [rise](#) to 6% on October 1, 2022.

Taxpayers can limit these charges by paying promptly. For more information, including details on fast and convenient electronic payment options, visit [IRS.gov/payments](https://irs.gov/payments). Penalty and interest charges generally don't apply to refunds.

The notice also provides details on relief for filers of certain international information returns when a penalty is assessed at the time of filing. No relief is available for applicable international information returns when the penalty is part of an examination. To qualify for this relief, any eligible tax return must be filed on or before September 30, 2022.

Penalty relief is automatic. This means that eligible taxpayers who have already filed their return do not need to apply for it, and those filing now do not need to attach a statement or other documents to their return. Generally, those who have already paid the penalty are getting refunds, most by the end of September.

Penalty relief is not available in some situations, such as where a fraudulent return was filed, where the penalties are part of an accepted offer in compromise or a closing agreement, or where the penalties were finally determined by a court.

This relief is limited to the penalties that the notice specifically states are eligible for relief. For ineligible penalties, such as the failure-to-pay penalty, taxpayers may use existing penalty relief procedures, such as applying for relief under the reasonable cause criteria or the First-Time Abate program. Visit [IRS.gov/penaltyrelief](https://irs.gov/penaltyrelief) for details.

This relief doesn't apply to 2021 returns. Whether or not they have a tax-filing extension, the IRS urges everyone to file their 2021 return soon to avoid processing delays. For [filing tips](#), visit [IRS.gov](https://irs.gov).

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Part III — Administrative, Procedural, and Miscellaneous

Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020

Notice 2022-36

SECTION 1. PURPOSE

This notice provides relief for certain taxpayers from certain failure to file penalties and certain international information return (IIR) penalties with respect to tax returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022. This notice also provides relief from certain information return penalties with respect to taxable year 2019 returns that were filed on or before August 1, 2020, and with respect to taxable year 2020 returns that were filed on or before August 1, 2021. The relevant penalties will be waived or, to the extent previously assessed, abated, refunded, or credited, as described in section 3.A of this notice. Situations where penalty relief does not apply are described in section 3.B of this notice.

SECTION 2. BACKGROUND

Section 6651(a)(1) of the Internal Revenue Code (Code) generally imposes an addition to tax for a failure to file (on or before the date prescribed) a tax return that is required under the authority of subchapter A of chapter 61 (other than part III regarding

information returns) of the Code, including certain income tax returns.¹

Section 6038 generally imposes a penalty for the failure of certain United States persons to furnish (on or before the date prescribed) certain information with respect to a controlled foreign corporation or a controlled foreign partnership that the person owns.

Section 6038A(d) imposes a penalty on a “25-percent foreign-owned” domestic corporation or wholly foreign-owned domestic disregarded entity for the failure to furnish (on or before the date prescribed) certain information or the failure to maintain certain records.

Section 6038C(c) imposes a penalty on a foreign corporation engaged in a U.S. trade or business for the failure to furnish (on or before the date prescribed) certain information or the failure to maintain certain records.

Section 6039F(c) imposes a penalty on a United States person for the failure to furnish (on or before the date prescribed) certain information with respect to the receipt of large gifts or bequests from foreign persons.

Section 6677 generally imposes a penalty on a United States person for the failure to file (on or before the date prescribed) a notice or return required by section 6048 with respect to transactions with, or ownership of, a foreign trust.

Section 6698(a)(1) generally imposes a penalty for the failure of any partnership to file (on or before the date prescribed) the return required under section 6031. Section 6698(a)(2) generally imposes a penalty for filing a return that fails to show the information required under section 6031.

¹ Unless otherwise stated, all “section” references are to provisions of the Code.

Section 6699(a)(1) generally imposes a penalty for the failure of any S corporation (as defined in section 1361(a)(1)) to file (on or before the date prescribed) a return required under section 6037. Section 6699(a)(2) generally imposes a penalty for filing a return that fails to show the information required under section 6037.

Section 6721(a)(2)(A) generally imposes a penalty for the failure to file an information return (as defined in section 6724(d)(1)) on or before the required filing date.

The foregoing penalties do not apply if the taxpayer can show that the failure to timely file the return or to furnish the required information or to provide the required notice, as applicable, is due to reasonable cause. See §§ 6651(a)(1), 6038(c)(4)(B), 6038A(d)(3), 6038C(c), 6039F(c)(2), 6677(d), 6698(a) flush language, 6699(a) flush language, and 6724(a).

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration).² The Emergency Declaration instructed the Secretary of the Treasury “to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a).” In response, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued a series of notices and other guidance to provide relief to affected taxpayers. In particular, Notice 2020-17, 2020-15 I.R.B. 590,

² <https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.

postponed the due date for certain Federal income tax payments from April 15, 2020, until July 15, 2020. Notice 2020-18, 2020-15 I.R.B. 590, superseded Notice 2020-17 and provided expanded relief postponing the due date for filing Federal income tax returns that were originally due on April 15, 2020, to July 15, 2020, among other things. Notice 2021-21, 2021-15 I.R.B. 986, postponed the due date for filing Federal income tax returns in the Form 1040 series and making certain Federal income tax payments that were originally due on April 15, 2021, to May 17, 2021.

Additions to tax or penalties for failure to timely file returns continued to accrue for taxpayers who did not file by the postponed due dates.

The COVID-19 pandemic has also had an unprecedented effect on the IRS's personnel and operations. The agency was called upon to support emergency relief for taxpayers, such as distributing economic impact payments,³ while sustaining its regular operations in a pandemic environment with limited resources, where employees were sometimes unable to be physically present to process tax returns and correspondence. In response to these challenges, the IRS has been working aggressively to process backlogged returns and taxpayer correspondence to return to normal operations for the 2023 filing season. The Treasury Department and the IRS have determined that the penalty relief described in this notice will allow the IRS to focus its resources more effectively, as well as provide relief to taxpayers affected by the COVID-19 pandemic.

SECTION 3. GRANT OF RELIEF

³ The IRS, in coordination with the Bureau of the Fiscal Service, issued more than 476.1 million payments through three rounds of economic impact payments, totaling more than \$814.4 billion during 2020 and 2021. IRS Data Book, 2021, Publication 55-B.

A. Waiver and Abatement of Certain Penalties for Taxpayers

The IRS will not impose the penalties listed in section 3.A.(1) through (4) of this notice with respect to the specified tax returns for taxable years 2019 and 2020 that are filed on or before September 30, 2022. The penalties listed in this section 3.A of this notice will be automatically abated, refunded, or credited, as appropriate without any need for taxpayers to request this relief.

(1) Additions to tax under section 6651(a)(1) for failure to file the following income tax returns:

- 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-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 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return; and*
 - *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)).*

(2) Certain penalties under sections 6038, 6038A, 6038C, 6039F and 6677 for failure to timely file the following IIRs:

- Penalties systematically assessed when a Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, and/or Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*, 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, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*, and on Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b))*.

(3) Penalties under section 6698(a)(1) for failure to timely file and under section 6698(a)(2) for failure to show the required information on a Form 1065, *U.S. Return of Partnership Income*.

(4) Penalties under section 6699(a)(1) for failure to timely file and under section 6699(a)(2) for failure to show the required information on a Form 1120-S, *U.S. Income Tax Return for an S corporation*.

In addition, the IRS will not impose the penalties under section 6721(a)(2)(A) for failure to timely file any information return (as defined in 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) or March 31, 2020 (if filed electronically); or March 15, 2020; or
- 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) or March 31, 2021 (if filed electronically); or March 15, 2021.

B. Exceptions

The penalty relief described in this notice does not apply to any penalties that are not specifically listed in the grant of relief under section 3.A of this notice. In addition, the

penalty relief described in section 3.A of this notice is not available with respect to any return to which the penalty for fraudulent failure to file under section 6651(f) or the penalty for fraud under section 6663 applies. The penalty relief described in this notice also does not apply to any penalties in an accepted offer in compromise under section 7122 because acceptance of the offer conclusively settled all of the liabilities in the offer under § 301.7122-1(e)(5) of the Procedure and Administration Regulations. The penalty relief described in this notice does not apply to any penalty settled in a closing agreement under section 7121 or finally determined in a judicial proceeding.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Han Huang of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice contact Ms. Huang at (202) 317-6844 (not a toll-free number).