

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.6417-2: Rules for Making Elective Payment Election (Also: 6417(h), 6081, 7803)

Rev. Proc. 2024-39

SECTION 1. PURPOSE

This revenue procedure grants certain applicable entities under section 6417(d)(1)(A) of the Internal Revenue Code (Code)¹ an automatic six-month extension of time to file an original or superseding Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e) of the Code)*, with any other relevant schedules and forms (such as Form 3800, *General Business Credit*, and any relevant source credit forms), to make an elective payment election as provided under section 6417(d)(3) and §1.6417-2(b) (elective payment election). This automatic six-

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR Part 1).

month extension, described in section 3 of this revenue procedure, means that certain applicable entities that did not timely file an extension on Form 8868, *Application for Extension of Time To File an Exempt Organization Return*, will nevertheless be granted an automatic six-month extension of time to file a Form 990-T for purposes of making an elective payment election. Taxpayers are not required to file a Form 8868 to receive the extension provided in this guidance.

Section 4 of this revenue procedure allows applicable entities to make the elective payment election on a paper-filed Form 990-T if they follow the procedural requirements of section 4.03 of this revenue procedure. The IRS strongly encourages electronic filing of returns to ensure more efficient processing of elective payment elections.

Section 5 of this revenue procedure provides procedures allowing for assistance on processing an elective payment election for applicable entities that are otherwise eligible for the relief in section 3 but receive a notice from the Internal Revenue Service (IRS) that their elective payment election was ineffective because the return on which it was made was filed after the due date of the return.

This relief is being granted for certain applicable entities making elective payment elections in the first year such elections are available because the Department of the Treasury (Treasury Department) and the IRS are aware that many applicable entities were unfamiliar with the filing and extension process with respect to Form 990-T. Further, many applicable entities have been unable to make an elective payment election on a timely, electronically-filed Form 990-T because of limitations in electronic filing capabilities of third-party return preparers.

SECTION 2. BACKGROUND

.01 Section 6417, which applies to taxable years beginning on or after January 1, 2023, allows applicable entities defined in section 6417(d)(1) to make an elective payment election under section 6417 with respect to any applicable credit determined with respect to the applicable entity for the taxable year. If an applicable entity makes an elective payment election, the applicable entity is treated as making a payment against Federal income taxes imposed by subtitle A of the Code for the taxable year with respect to which such credit was determined that is equal to the amount of such credit (elective payment amount). An election under section 6417 must be made at such time and in such manner as provided by the Secretary of the Treasury or her delegate (Secretary).

.02 Section 1.6417-2(b)(1)(i) provides an elective payment election is made on the annual tax return, as defined in §1.6417-1(b), in the manner prescribed by the IRS in guidance, along with any required completed source credit form(s) with respect to the applicable credit property, a completed Form 3800 (or its successor), and any additional information, including supporting calculations, required in instructions. Section 1.6417-1(b)(1) defines annual tax return for any taxpayer normally required to file a tax return with the IRS on an annual basis as the required return (including the Form 990-T for organizations subject to tax imposed by section 511 of the Code or a proxy tax under section 6033(e) or that are required to file a Form 990 pursuant to section 6033(a)).

.03 Section 6417(d)(3)(A)(i) provides rules regarding the due date for making an elective payment election. Under §1.6417-2(b)(3)(i), in the case of any taxpayer for

which no Federal income tax return is required under sections 6011 or no Federal return is required under 6033(a) of the Code (such as a State; the District of Columbia; an Indian Tribal government; any U.S. territory; a political subdivision of a State, the District of Columbia, or a U.S. territory, or a subdivision of an Indian Tribal government; certain agencies or instrumentalities of a State, the District of Columbia, an Indian Tribal government, or a U.S. territory; or a taxpayer excluded from filing pursuant to section 6033(a)(3)), an elective payment election is due by the 15th day of the fifth month after the end of such applicable entity's taxable year. However, subject to the issuance of guidance that specifies the manner in which such entities can request an extension of time to file and make the elective payment election, an automatic six-month extension from the 15th day of the fifth month after the end of the taxable year is deemed to be allowed. In the case of an applicable entity for which a return is required under section 6011 or 6033(a), an elective payment election under section 6417(a) cannot be made later than the due date (including extensions of time) for the tax return for the taxable year for which the election is made, and there is no deemed automatic extension of time from the original due date.

.04 For example, a State government with a taxable year ending December 31, 2023, would have an original due date to file Form 990-T to make an elective payment election of May 15, 2024, with an automatic six-month extension of time to November 15, 2024. A tax-exempt entity with a taxable year ending December 31, 2023, would have an original due date to file Form 990-T to make an elective payment election of May 15, 2024, but, without the relief granted in section 3.02 of this revenue procedure,

would receive a six-month extension of time to file only if the tax-exempt entity properly filed Form 8868 on or before May 15, 2024.

.05 Section 6417(h) authorizes the Secretary to issue such regulations or other guidance as may be necessary to carry out the purposes of section 6417, including guidance to ensure that the amount of the payment or deemed payment made under section 6417 is commensurate with the amount of the credit that would be otherwise allowable (determined without regard to section 38(c)).

.06 Section 6081(a) permits the Secretary to grant a reasonable extension of time, generally no more than six months, for filing any return, statement, or other required document.

.07 Section 7803(a)(2)(A) provides that the Commissioner of Internal Revenue “shall have such duties and powers as the Secretary may prescribe, including the power to administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws or related statutes and tax conventions to which the United States is a party.”

.08 As previously described in section 1 of this revenue procedure, the Treasury Department and the IRS are aware that many applicable entities that had otherwise intended to timely and properly make an elective payment election on an electronically-filed Form 990-T were nevertheless unable to do so. For example, some applicable entities that did not previously have an obligation to file Form 990-T timely filed the required Form 990, *Return of Organization Exempt from Income Tax*, but failed to file a Form 990-T, which is required to make an elective payment election. Other applicable

entities have been unable to engage third-party return preparers to electronically file the Form 990-T with any other relevant schedules and forms due to service limitations.

SECTION 3. AUTOMATIC SIX-MONTH EXTENSION OF TIME GRANTED TO CERTAIN APPLICABLE ENTITIES

.01 Scope. An applicable entity defined in section 6417(d)(1)(A) and §1.6417-1(c) is eligible for the relief provided in section 3.02 of this revenue procedure if the applicable entity (1) had a filing obligation under sections 6011 or 6033(a); (2) did not otherwise receive an extension of time to file a return²; (3) is filing a Form 990-T to make an elective payment election for a taxable year ending on any day between, and including, December 31, 2023 through November 30, 2024, regardless of whether the applicable entity previously filed a return for that taxable year; and (4) meets all other requirements for making an elective payment election, including pre-filing registration as required by §1.6417-2(b)(2) and described in §1.6417-5.

.02 Extension Relief.

(1) An applicable entity described in section 3.01 of this revenue procedure is granted an automatic six-month extension of time to file an original or superseding Form 990-T (with any other relevant schedules and source credit forms necessary to make an elective payment election) electronically or on paper. This relief does not require the filing of a Form 8868 for the Form 990-T. See section 5.02 of this revenue procedure if the applicable entity's elective payment election made during the extension period is

² An applicable entity that already received an extension of time to file a Form 990-T from an original due date will continue to have that 6-month extended due date, and therefore does not need the relief provided in this section 3. Such applicable entity, however, may be eligible to paper file its Form 990-T as described in section 4 of this revenue procedure.

rejected and the applicable entity receives a letter (for example, a CP131, CP131A, CP132 or CP133) from the IRS. If the applicable entity's original due date has not passed, however, the applicable entity may also choose to file Form 8868, which should prevent any erroneous rejection described in section 5 of this revenue procedure. Form 8868 may be filed on paper or electronically, but the IRS recommends electronic filing whenever possible.

(2) This automatic six-month extension of time to file an original or superseding Form 990-T means that, for example, an applicable entity with a taxable year ending on December 31, 2023, which meets the other requirements of section 3.01, may timely file a Form 990-T to make an elective payment election on or before November 15, 2024. Similarly, an applicable entity with a taxable year ending on November 30, 2024, which meets the other requirements of section 3.01, may timely file a Form 990-T to make an elective payment election on or before October 15, 2025.

SECTION 4. ELECTIVE PAYMENT ELECTION MAY BE MADE ON A PAPER-FILED FORM 990-T

.01 Scope. An applicable entity defined in section 6417(d)(1)(A) and §1.6417-1(c) is eligible for the relief provided in section 4.02 of this revenue procedure if the applicable entity (1) is eligible to file a Form 990-T to make an elective payment election; (2) is filing a Form 990-T to make an elective payment election for a taxable year ending on any day between, and including, December 31, 2023 through November 30, 2024; and (3) meets all other requirements for making an elective payment election, including pre-filing registration as required by §1.6417-2(b)(2) and described in §1.6417-5.

.02 Paper-Filing Relief. An applicable entity described in section 4.01 of this revenue procedure may make an elective payment election on a paper-filed Form 990-T (along with any other relevant schedules and source credit forms necessary to make an elective payment election) if it complies with the procedures described in section 4.03 of this revenue procedure.

.03 Procedure for paper-filing Form 990-T. An applicable entity using the relief provided by section 4.02 of this revenue procedure must mail the paper Form 990-T (along with any other relevant schedules and forms) to Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027 and notate “Paper Filed under Revenue Procedure 2024-39” at the top of the return.

SECTION 5. PROCEDURE FOR APPLICABLE ENTITIES THAT HAVE RECEIVED A NOTICE THAT THEIR ELECTIVE PAYMENT ELECTION IS INEFFECTIVE

.01 Scope. When an applicable entity files an ineffective elective payment election because the election is late, the IRS generally will issue a letter (for example, a CP131, CP131A, CP132 or CP133) to that applicable entity. If an applicable entity described in section 3.01 of this revenue procedure makes an elective payment election on a Form 990-T filed from a date after the original due date through the extended due date, and receives a letter that the elective payment election is ineffective because the return was late filed, then the applicable entity should follow the procedures in section 5.02 to ensure their elective payment election is properly processed.

.02 Procedure for responding to a letter stating the elective payment election is ineffective. An applicable entity that is described in section 5.01 (meaning an applicable

entity that has filed Form 990-T for an elective payment election within the extended filing period but received a notice indicating the elective payment election is ineffective due to a late filed return) can obtain assistance by calling IRS Tax Exempt and Government Entities Customer Account Services at 877-829-5500 (toll-free number) and referencing that the applicable entity is entitled to an automatic extension of time to file under Rev. Proc. 2024-39.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Waheed Olayan of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Mr. Olayan at (202) 317-6239 (not a toll-free call).