

**DESCRIPTION OF H.R. 5443,  
A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1986 TO  
REQUIRE ELECTRONIC FILING OF THE ANNUAL RETURNS OF  
EXEMPT ORGANIZATIONS AND PROVIDE FOR MAKING SUCH  
RETURNS AVAILABLE FOR PUBLIC INSPECTION**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on April 11, 2018

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



April 10, 2018  
JCX-27-18

## CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
A. Mandatory Electronic Filing for Annual Returns of Exempt Organizations .....	2
B. Estimated Revenue Effect of the Proposal.....	4

## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5443, a bill to amend the Internal Revenue Code of 1986 to require electronic filing of the annual returns of exempt organizations and provide for making such returns available for public inspection. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

---

<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5443, A Bill to Amend the Internal Revenue Code of 1986 to Require Electronic Filing of the Annual Returns of Exempt Organizations and Provide for Making Such Returns Available for Public Inspection* (JCX-27-18), April 10, 2018. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references herein are to the Internal Revenue Code of 1986, as amended (herein “Code”), unless otherwise stated.

## **A. Mandatory Electronic Filing for Annual Returns of Exempt Organizations**

### **Present Law**

#### **In general**

The Internal Revenue Service Restructuring and Reform Act of 1998 (“RRA 1998”)<sup>2</sup> states a Congressional policy to promote the paperless filing of Federal tax returns. Section 2001(a) of RRA 1998 set a goal for the IRS to have at least 80 percent of all Federal tax and information returns filed electronically by 2007.<sup>3</sup> Section 2001(b) of RRA 1998 requires the IRS to establish a 10-year strategic plan to eliminate barriers to electronic filing.

Present law requires the Secretary to issue regulations regarding electronic filing and specifies certain limitations on the rules that may be included in such regulations.<sup>4</sup> The statute requires that Federal income tax returns prepared by specified tax return preparers be filed electronically,<sup>5</sup> and that all partnerships with more than 100 partners be required to file electronically. For taxpayers other than partnerships, the statute prohibits any requirement that persons who file fewer than 250 returns during a calendar year file electronically. With respect to individuals, estates, and trusts, the Secretary may permit, but generally cannot require, electronic filing of income tax returns. In crafting any of these required regulations, the Secretary must take into account the ability of taxpayers to comply at reasonable cost.

The regulations require corporations that have assets of \$10 million or more and file at least 250 returns during a calendar year to file electronically their Form 1120/1120S income tax returns and Form 990 information returns for tax years ending on or after December 31, 2006. In determining whether the 250 return threshold is met, income tax, information, excise tax, and employment tax returns filed within one calendar year are counted.

#### **Tax-exempt organizations**

Most tax-exempt organizations are required to file annual information returns in the Form 990 series. Since 2007, the smallest organizations – generally, those with gross receipts of less than \$50,000 – may provide an abbreviated notice on Form 990-N, sometimes referred to as an “e-postcard.” Which form to file depends on the annual receipts, value of assets, and types of

---

<sup>2</sup> Pub. L. No. 105-206.

<sup>3</sup> The Electronic Tax Administration Advisory Committee, the body charged with oversight of IRS progress in reaching that goal reported that e-filing by individuals exceeded 80 percent in the 2013 filing season, but projected an overall rate of 72.8 percent based on all Federal returns. See Electronic Tax Administration Advisory Committee, *Annual Report to Congress*, June 2013, IRS Pub. 3415, page 6.

<sup>4</sup> Sec. 6011(e).

<sup>5</sup> Section 6011(e)(3)(B) defines a “specified tax return preparer” as any return preparer who reasonably expects to file more than 10 individual income tax returns during a calendar year.

activities of the exempt entity. The Forms 990, 990-EZ, and 990-PF are released to the public on DVDs.

In general, only the largest and smallest tax-exempt organizations are required to electronically file their annual information returns. First, as indicated above, tax-exempt corporations that have assets of \$10 million or more and that file at least 250 returns during a calendar year must electronically file their Form 990 information returns. Private foundations and charitable trusts, regardless of asset size, that file at least 250 returns during a calendar year are required to file electronically their Form 990-PF information returns.<sup>6</sup> Finally, organizations that file Form 990-N (the e-postcard) also must electronically file.<sup>7</sup>

### **Description of Proposal**

The proposal extends the requirement to e-file to all tax-exempt organizations required to file statements or returns in the Form 990 series or Form 8872 (“Political Organization Report of Contributions and Expenditures”). The proposal also requires that the IRS make the information provided on the forms available to the public (consistent with the disclosure rules of section 6104 of the Code) in a machine-readable format as soon as practicable. It is intended that the information be provided to the public in a format that permits one to extract and perform computations on the data but not alter or manipulate the statements or returns from which the data is to be extracted.

### **Effective Date**

The proposal generally is effective for taxable years beginning after date of enactment. Transition relief is provided for certain organizations. First, for certain small organizations or other organizations for which the Secretary determines that application of the e-filing requirement would constitute an undue hardship in the absence of additional transitional time, the requirement to file electronically must be implemented not later than taxable years beginning two years following the date of enactment. For this purpose, small organization means any organization: (1) the gross receipts of which for the taxable year are less than \$200,000; and (2) the aggregate gross assets of which at the end of the taxable year are less than \$500,000. In addition, the proposal grants IRS the discretion to delay the effective date not later than taxable years beginning two years after the date of enactment for the filing of Form 990-T (reports of unrelated business taxable income or the payment of proxy tax under section 6033(e)).

---

<sup>6</sup> Taxpayers can request waivers of the electronic filing requirement if they cannot meet that requirement due to technological constraints, or if compliance with the requirement would result in undue financial burden on the taxpayer.

<sup>7</sup> See Form 990-N, “Electronic Notice for Tax-exempt Organizations Not Required to File a Form 990 or 990-EZ.”

## **B. Estimated Revenue Effect of the Proposal**

The proposal is estimated to have no effect on Federal fiscal year budget receipts for the period 2018-2028.