

Part I - Income taxes

Compliance initiative for nonresident aliens and foreign corporations

Notice 2003-38

The Internal Revenue Service (IRS) announces a compliance initiative for nonresident aliens and foreign corporations that have not filed U.S. federal income tax returns and that may consequently be denied deductions and credits pursuant to Code section 874(a) or 882(c)(2). Taxpayers that have requests for waivers pending with the IRS under Regs. 1.874-1(b)(2) or 1.882-4(a)(3)(ii) may also participate in this compliance initiative.

This compliance initiative is intended to encourage nonresident aliens and foreign corporations to file income tax returns that were not filed in a timely manner in accordance with the regulations under section 874(a) or 882(c)(2). The IRS will waive the filing deadlines set forth in Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) if a taxpayer files on or before September 15, 2003 all required U.S. federal income tax returns for every year for which a waiver is requested. In addition, a taxpayer must pay the reported income tax liability with each such return, must pay statutory interest and penalties as determined by the IRS (except the fraudulent failure to file penalty, as discussed below), and must cooperate with the IRS upon request in determining and satisfying its income tax liability for any taxable year for which a waiver is requested. To qualify for a waiver, a taxpayer must attach a statement to each late income tax return for which a waiver is requested agreeing to cooperate with the IRS upon request in determining and satisfying the taxpayer's income tax liability for that taxable year. The requirements of this compliance initiative may not be satisfied by filing protective returns.

This compliance initiative is not available where the taxpayer has previously filed a U.S. federal income tax return or a protective return for any taxable year prior to a taxable year for which a waiver is requested, or where the IRS has contacted the taxpayer concerning a failure to file U.S. federal income tax returns, initiated an examination or investigation of the taxpayer, or notified the taxpayer that it intends to commence an examination or investigation.

SCOPE OF THE WAIVER

Under this compliance initiative, the IRS will waive the filing deadlines set forth in Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) with respect to late-filed U.S. federal income tax returns. With respect to U.S. federal income tax returns filed pursuant to this compliance initiative, the IRS will also waive the fraudulent failure to file penalty under section 6651(f), but not the failure to file penalty under section 6651(a)(1). The IRS will impose other applicable penalties, as appropriate, with respect to U.S. federal income tax returns filed pursuant to this compliance initiative.

If a taxpayer that is eligible under this Notice to participate in this compliance initiative files all required U.S. federal income tax returns for taxable years ending in 1996 and all subsequent years for which the applicable deadline set forth in Regs. 1.874-1(b)(1) or 1.882-4(a)(3)(i) has passed, and satisfies all other requirements set forth in this Notice, the IRS will not examine any potential U.S. federal income tax liability with respect to taxable years ending prior to 1996. However, effect will be given to a carryover item of deduction or credit only if all required U.S. federal income tax returns are filed on or before September 15, 2003, for the year in which the item arose and for all years through the year in which the item has effect, and the taxpayer cooperates with the IRS upon request in verifying the carryover item of deduction or credit. Protective returns will not satisfy the requirements of this or the preceding paragraph.

SUBMISSION PROCESS

The IRS will waive the timely filing requirement under Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) for any taxable year for which a waiver is requested, provided that the nonresident alien or foreign corporation:

- (1) files a true and accurate return for such taxable year, not including a protective return, with the Philadelphia Service Center on or before September 15, 2003;
- (2) pays the reported tax liability with the filing of the return;
- (3) pays statutory interest under section 6601 and penalties as determined by the IRS;
- (4) agrees in a statement attached to the return to cooperate with the IRS upon request in determining and satisfying the taxpayer's liability for income tax, interest and penalties, for the taxable year for which a waiver is requested, and does in fact cooperate in accordance with such agreement, and satisfy any liability determined; and
- (5) attaches to the return a copy of any power of attorney (Forms 2848) granted by the taxpayer with respect to such taxable year.

Income tax returns that were not timely filed pursuant to Regs. 1.874-1(b)(1) and 1.882-4(a)(3)(i) must be filed with the Philadelphia Service Center via the United States Postal Service to P.O. Box 480, Bensalem, PA 19020; or by private delivery service to 11601 Roosevelt Blvd., Philadelphia, PA 19154.

Each late return filed under this notice must be marked at the top, in red,

“RETURN FILED UNDER NOTICE 2003-38.”

MISCELLANEOUS

The provisions of this notice relate to qualification for and participation in a compliance initiative with respect to late U.S. federal income tax returns filed on or before September 15, 2003, for prior taxable years by taxpayers subject to section 874(a) or 882(c)(2).

The IRS is committed to assisting all taxpayers to file their required U.S. federal income tax returns. Taxpayers that do not file pursuant to this compliance initiative are not prevented from demonstrating that they satisfy the reasonable cause exception under Regs. 1.874-1(b)(2) or 1.882-4(a)(3)(ii).

PAPERWORK REDUCTION ACT

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1845. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The collection of information in this announcement is in the section titled **SUBMISSION PROCESS**.

This information is required to determine whether a taxpayer is entitled to a waiver under this compliance initiative. The collection of information is required to obtain the benefit described in this notice. The likely respondents are individuals, and businesses or other for-profit organizations.

The estimated total annual reporting burden is 50 hours. The estimated annual burden per respondent is 15 minutes. The number of respondents is uncertain but is estimated at 200. The estimated frequency of responses is one time per respondent. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

CONTACT INFORMATION

For further information regarding this notice, contact Jim Carfine at (202) 435-5044 (not a toll-free call).

Frequently Asked Questions

1. What is the Compliance Initiative for Nonresident Aliens and Foreign Corporations?

Under sections 874(a) and 882(c) of the Internal Revenue Code, a nonresident alien or foreign corporation that does not timely file a U.S. federal income tax return where required generally is denied all deductions and credits. With limited exceptions, the regulations under those sections require the taxpayer to file its return within 16 months (in the case of a nonresident alien) or 18 months (in the case of a foreign corporation) of the extended due date in order to protect its deductions and credits.

The Compliance Initiative provides an opportunity for qualifying nonresident alien individuals and foreign corporations that are currently in a non-filing status to file delinquent returns and receive a waiver of the filing deadlines set forth in Reg. 1.874-1(b)(1) and Reg. 1.882-4(a)(3). thereby restoring otherwise available deductions and credits. Returns for which a waiver is sought must be filed on or before September 15, 2003, in the manner specified by Notice 2003-38.

2. What is the object of the Compliance Initiative?

The success of our self assessment tax system depends in large part upon the willingness of taxpayers to fulfill their filing requirements voluntarily. The taxation of nonresident aliens and foreign corporations is governed by particularly complex Code and treaty provisions, and some taxpayers may have inadvertently found themselves in a non-filing status. The purpose of the Compliance Initiative is to encourage taxpayers to file their delinquent U.S. income tax returns and satisfy their tax obligations.

3. Is this a tax amnesty?

No. Participating taxpayers must pay the full tax liability reported on each return filed, plus interest and penalties as determined by the Service. The Notice waives only the fraudulent failure to file penalty under section 6651(f).

[4. Why should a nonresident alien or foreign corporation participate in the Compliance Initiative?](#)

The benefit is that the IRS will waive the timely filing requirements of Reg. 1.874-1(b)(1) and Reg. 1.882-4(a)(3), thus allowing the taxpayer to claim its otherwise available deductions and credits in determining its taxable income.

[5. What are the eligibility criteria for participating in the Compliance Initiative?](#)

The Compliance Initiative is open to any nonresident alien or foreign corporation that did not timely file one or more U.S. federal income tax returns and that may, consequently, be denied deductions and credits pursuant to Code section 874(a) or 882(c), except where:

- a. The nonresident alien or foreign corporation previously filed a U.S. federal income tax return or protective return for any taxable year prior to the taxable year(s) for which a waiver is requested;
- b. The IRS has contacted the nonresident alien or foreign corporation concerning a failure to file U.S. federal income tax returns; or
- c. The IRS has initiated an examination or investigation of the nonresident alien or foreign corporation, or has notified it that it intends to commence such an examination or investigation.

[6. Why is the Compliance Initiative limited to nonresident aliens and foreign corporations?](#)

The provisions of Code sections 874(a) and 882(c) apply only to such taxpayers. Other taxpayers do not face a potential disallowance of all deductions or credits if their returns are not timely filed.

[7. What is required of participants in the Compliance Initiative?](#)

To participate in the Compliance Initiative, the nonresident alien or foreign corporation must, for each year for which a waiver of the filing requirement is requested:

- a. File a true and accurate return for such taxable year (a protective return will not satisfy this requirement) with the Philadelphia Service Center on or before September 15, 2003;
- b. Pay the reported tax liability with the return when filed;

- c. Pay statutory interest under section 6601 and penalties as determined by the IRS;
- d. Agree in a statement attached to the return to cooperate with the IRS upon request in determining and satisfying its income tax liability for the taxable year for which a waiver is requested and in fact cooperate in accordance with such agreement; and
- e. Attach to the return a copy of any power of attorney (Forms 2848) granted by the taxpayer with respect to such taxable year.

8. Where does the nonresident alien or foreign corporation file returns under the Compliance Initiative?

Returns filed pursuant to this Compliance Initiative must be filed with the Philadelphia Service Center, either via the U.S. Postal Service to P.O. Box 480, Bensalem, PA 19020, or by private delivery service to 11601 Roosevelt Blvd., Philadelphia, PA 19154.

Each late return filed under this notice must be marked at the top, in red, **“RETURN FILED UNDER NOTICE 2003-38”**.

9. Will the taxpayer know that a waiver of the filing deadline has been granted?

No. The taxpayer will not receive a confirmation that the waiver has been granted.

If the nonresident alien or foreign corporation meets the eligibility criteria for participating in the Compliance Initiative, as set forth in Notice 2003-38, and satisfies all of the requirements of that Notice for the taxable year(s) concerned, the waiver will automatically be granted for such years. No further action is required of the taxpayer.

10. What if the nonresident alien or foreign corporation has previously requested that the IRS waive the timely filing requirement under Reg. 1.874-1(b)(1) or Reg. 1.882-4(a)(3)? May the taxpayer participate in the Compliance Initiative?

If the IRS has not yet made a decision on the pending waiver request, the taxpayer may participate, provided that it otherwise meets the eligibility criteria for participation in, and satisfies the requirements of, the Compliance Initiative, as set forth in Notice 2003-38.

If the IRS has previously considered and denied the taxpayer’s request for a waiver for the same year(s) under Reg. 1.874-1(b)(1) or Reg. 1.882-4(a)(3), the

taxpayer may not participate in the Compliance Initiative for that year(s).

11. The nonresident alien or foreign corporation filed a U.S. federal income tax return or protective claim for Years 1 and 2, but has not filed a U.S. tax return or protective claim for Years 3 and 4. In Year 5, the taxpayer wishes to correct its non-filing status for Years 3 and 4. May the taxpayer do this by participating in the Compliance Initiative?

No, the taxpayer does not meet the criteria for participation in the Compliance Initiative as discussed in question #5. However, the taxpayer may seek a waiver of the filing deadline by demonstrating to the appropriate IRS office that it “acted reasonably and in good faith in failing to file a U.S. tax return,” as provided in Reg. 1.874-1(b)(1) and Reg. 1.882-4(a)(3). The fact that the taxpayer did not meet the eligibility criteria for participation in the Compliance Initiative will not have an effect on the IRS’s review of the taxpayer’s request for a waiver pursuant to the Regulations.

In this scenario, it should be noted that the taxpayer may be able to timely file its return for Year 4, if it meets the deadline set forth in Reg. 1.874-1(b)(1) or Reg. 1.882-4(a)(3).

12. The nonresident alien or foreign corporation has been in a non-filing status for many years. How far back does it need to go in requesting waivers of the filing deadline?

The taxpayer may request waivers for as few or as many years as it believes appropriate to its situation.

If, pursuant to the Compliance Initiative, the taxpayer files all required U.S. federal income tax returns for taxable years ending in 1996 and all subsequent years for which the filing deadline has passed, the IRS will not examine any potential U.S. federal income tax liability with respect to taxable years ending prior to 1996. This is consistent with existing IRS policy, as set forth in Policy Statement P-5-133, which provides that the IRS will not generally pursue delinquent returns more than six years old. However, the taxpayer may, if it wishes, request a waiver from the filing deadline for taxable years ending prior to 1996.

13. Will the IRS, in connection with the Compliance Initiative, ever require a nonresident alien or foreign corporation to file delinquent returns for more than the six most recent years?

Yes, if the taxpayer wishes to claim a carryover item of deduction or credit that arose in an earlier year, effect will be given to that carryover only if the taxpayer files all required U.S. federal income tax returns for the year in which

the item arose and for all years through the year in which the item has effect. The taxpayer must also cooperate with the IRS upon request in verifying the carryover item.

14. Does a nonresident alien or foreign corporation receive any penalty relief if it participates in the Compliance Initiative?

With respect to income tax returns filed late pursuant to this Compliance Initiative, the IRS will waive the fraudulent failure to file penalty under section 6651(f), but not the failure to file penalty under section 6651(a)(1). The IRS will impose other applicable penalties, as appropriate, with respect to U.S. federal income tax returns filed pursuant to this Compliance Initiative.

15. How will the IRS process a delinquent return filed under the Compliance Initiative?

The returns will be processed by the Philadelphia Service Center using normal procedures for a delinquent return. PSC will assess interest on any deficiency and assess any applicable penalty, other than the fraudulent failure to file penalty under section 6651(f). The returns will be processed for classification and may be forwarded to an examination function for audit.

16. If the IRS proposes a penalty for which the taxpayer believes it can demonstrate a reasonable cause for abatement, can the taxpayer contest the application of a penalty?

Yes, the taxpayer may pursue an abatement of the application of any penalty with the Philadelphia Service Center, in accordance with the usual penalty abatement procedures under IRM 20.1.1.3.4.

17. If the returns filed by a nonresident alien or foreign corporation pursuant to the Compliance Initiative are classified for audit, can the examiner deny the waiver?

The examiner may verify that a nonresident alien or foreign corporation meets the eligibility criteria for, and satisfies the requirements of, the Compliance Initiative, as set forth in Notice 2003-38. These requirements include cooperation by the taxpayer upon request in connection with the examination and satisfaction of its tax liability. If the taxpayer satisfies these criteria and requirements, the examiner cannot revoke the waiver granted for the taxable year under the Compliance Initiative.

If the examiner determines that the taxpayer did not meet the eligibility criteria for, or satisfy the requirements of, the Compliance Initiative, the examiner would then apply the reasonable cause criteria set forth in Reg. 1.874-1(b)(1)

and Reg. 1.882-4(a)(3) and would deny the waiver only where the taxpayer does not satisfy the reasonable cause criteria.

18. May taxpayers obtain an extension of the September 15, 2003 filing deadline for returns filed pursuant to the Compliance Directive?

No, an extension cannot be provided. Taxpayers that cannot meet this deadline may, however, request a waiver of the filing deadline under the reasonable cause standard set forth in Reg. 1.874-1(b)(1) and Reg. 1.882-4(a)(3).

19. If a taxpayer or its representative has a question regarding the Compliance Initiative, how can he or she speak directly with an IRS representative?

Questions regarding the Compliance Initiative that are not answered in Notice 2003-38 or these Frequently Asked Questions may be referred to Jim Carfine, at (202) 435-5044 (not toll-free calls).