

Waivers for Form 1065 Electronic Filing Due to Unavailability of the Necessary Software

Announcement 2001-75

Section 6011(e)(2) of the Internal Revenue Code and section 301.6011-3(a) of the Regulations on Procedure and Administration require partnerships with more than 100 partners to file their partnership returns (Form 1065 series) on magnetic media. The regulations define "magnetic media" to include electronic filing, if electronic filing is required by the Internal Revenue Service ("Service").

The Service has become aware that some partnerships cannot file electronically because the necessary software for some required forms is unavailable. This announcement describes how partnerships required to file electronically under section 6011(e)(2) may request a section 6724(a) reasonable cause waiver for failing to file electronically.

This announcement is applicable only to waiver requests made by taxpayers who are required to file forms and schedules that are not supported by electronic filing software and who cannot file those forms and schedules as paper attachments to the Form 8453-P.

The forms that may be attached to the Form 8453-P are listed later in this announcement. This announcement is not applicable to other types of waiver requests (i.e. economic hardship). Announcement 2001-101 describes how to request waivers from filing electronically under section 6011(e) for other reasons.

Waiver Request Procedures

Taxpayers are required to submit a waiver request to the Memphis Submission Processing Center by October 1, 2001. To initiate a waiver request, the following information must be submitted for each partnership:

Partnership Name	Federal Tax Identification Number	Number Of K-1's	Name Of Software Being Used	Unavailable Forms And Schedules

Taxpayers may mail or fax the waiver request to the following:

Mail to: Internal Revenue Service
P.O. Box 420
Memphis, TN 38101-0420

Attn: Electronic Filing Unit,
Step 2711

or

Fax to: 901-546-2544

Requests from the partnerships' tax advisor/preparer do not have to be accompanied by a valid power of attorney. If a valid power of attorney is not on file, the Service will address questions about the waiver to the partnership. Also, partnerships need not file Form 8800 before submitting a waiver request under this procedure. However, approval of a waiver request will not relieve the partnership of a failure to file penalty for returns filed after the original due date without a valid extension.

To complete the waiver request process, taxpayers must attach a signed waiver request to the Form 1065 return at the time it is filed. The signed waiver request must include the following information:

1. A notation in large red letters at the top of page 1 of the Form 1065 return,

"Waiver Request: IRC Section 6011(e)(2)";

2. The Waiver Request Attached must contain:

- a) A notation at the top *"Waiver Request: IRC Section 6011(e)(2)";*
- b) The name, federal tax identification number, and mailing address of the partnership;
- c) The taxable year for which the waiver is requested;
- d) A detailed statement which lists:
 - (i) What steps the partnership has taken in an attempt to meet its requirement to file its return electronically,
 - (ii) Why the steps were unsuccessful,
 - (iii) What steps the partnership will take to assure its ability to electronically file its partnership return for the next tax year.
- e) *A statement signed by the Tax Matters Partner, as defined in section 6231(a)(7) of the Code, stating:*

"Under penalties of perjury, I declare that the information contained in this waiver request is true, correct and complete to the best of my knowledge and belief."

Failure to complete the entire process will result in the Service denying the waiver

request and assessing the penalty for failure to file electronically.

Service Determination

Within 30 days after receipt of the initial waiver request, the Service will notify the partnership if the Service is denying the waiver request. Partnerships may not appeal a denial of a waiver request at any time. After verifying that a listed form is unavailable and may not be filed with the Form 8453-P, the Service will process initial waiver requests to prevent the assessment of the penalty for failure to file electronically. However, the Service must also receive the required waiver request attached to the filed Form 1065 to ensure the penalty will not be subsequently assessed. If the Service processes an initial waiver request and a form listed in the initial waiver request becomes available before the partnership files its Form 1065, the Service will not deny the waiver request based on the subsequent availability of the form.

The Service will not grant waiver requests for the following forms that may be attached to the 8453-P, allowing the rest of the return to be filed electronically: Schedule A (Form 5713), Schedule A (Form 8847), Schedule B (Form 5713), Schedule C (Form 5713), Schedule J (Form 5471), Schedule M (Form 5471),

Schedule N (Form 5471), Schedule O (Form 5471), Form T, Form 982, Form 4255, Form 5471, Form 6478, Form 8283, Form 8582-CR, Form 8594, Form 8820, Form 8861, Form 8866, Form 8873.

Failure to File Penalty

It is not the Service's intent to assess penalties for failure to file electronically because the necessary software is not available and the partnership cannot file the forms with the Form 8453-P. However, penalties may inadvertently be as-

sessed. If a filer receives an improper penalty notice, the filer should request an abatement of the penalties by sending a letter to the IRS at the address provided in this announcement. Filers must include the information requested in the CP Notice 162 assessing the penalty.

Late Filing Penalties

The electronic postmark is not available for the current tax year for electronic Forms 1065. However, the IRS will accept the transmitter's date and time acknowledgement for purposes of evaluat-

ing requests to abate late-filing penalties assessed on partnership returns.

For questions concerning a request for waiver or a late filing penalty of an electronic Form 1065, contact the Memphis Submission Processing Center at 901-546-2690 (not a toll-free call).