

# BREAKING NEWS

## For Immediate Release:

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Employee Benefits  
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## IRS ISSUES UPDATE ON LATE OR INCORRECT FILINGS OF FORMS 1094-C AND 1095-C

### Executive Summary

- Even if late, employers (“filers”) should still file Forms 1094-B, 1095-B, 1094-C, and 1095-C (“Returns”) as soon as possible, as the IRS has indicated that it may waive penalties for late filings if filers make a good faith effort to comply with the reporting requirements.
- Filers who have already filed Forms 1094-C and 1095-C may receive Notice from the IRS to correct inaccurate Tax ID numbers of employees within a very short timeframe.
- Filers may not be required to provide corrected returns for inaccurate Tax ID numbers if they can prove “reasonable cause” for the failure.
- Filers that need to file corrected Returns should do as soon as possible. Directions are provided below.

### Late Returns

Now that the deadlines to file Forms 1094-B, 1095-B, 1094-C, and 1095-C (“Returns”) either in paper format (May 31, 2016) or electronically (June 30, 2016) have passed, many filers may be wondering: What should we do if we haven’t filed Returns yet? The IRS rejected our filings, what should we do now? How do I correct a form that was previously submitted incorrectly? The information below addresses some of the common questions filers may have at this stage, including how to proceed with late, rejected, and erroneous filings.

#### ***Better Late Than Never***

Filers who electronically file their Returns are required to register for and use the ACA Information Returns system (AIR). The IRS has announced that the AIR system will remain open beyond the June 30, 2016 deadline, and filers who failed to file their Returns by June 30th should still proceed to submit their Returns through the AIR system.

The AIR system will also remain open to accept filings that were originally rejected or filings that required corrections. Instructions for filing corrected returns are discussed below.

### ***Relief from Penalties***

Generally, filers are subject to penalties for failure to timely or correctly file Returns. However, the IRS seems to be providing leeway when assessing penalties for filers who make a good faith effort to correctly and timely file the Returns.

The IRS has indicated that it may not assess penalties for late filing of Returns, so long as the filer has made legitimate efforts to register with the AIR system and file the Returns, and continues to make such efforts to complete the filing process as soon as possible. If a penalty is assessed for late filings, the IRS may still waive the penalty if the filer can show reasonable cause for failing to timely file the Returns. Filers, therefore, should file Returns as soon as possible, as relief from penalties may still be available.

### **Incorrect Tax ID Numbers and Special Rule for Incorrect Tax ID Numbers**

The IRS has begun to send written Notices/Letters to filers requesting that they correct any previously submitted inaccurate Tax ID numbers of employees. The requests have been for immediate correction.

Despite the requirement for filing corrected Returns if a filer previously submitted incorrect/incomplete Returns to the IRS or face potential penalties for failing to do so, a filer may have a valid reason for not filing a corrected Return for missing or incorrect Tax ID numbers of employees if the filer meets the “reasonable cause” criteria.

The “reasonable cause” criteria is separated into two categories:

- 1) Significant mitigating factors; and
- 2) The failure arose from events beyond the filer’s control.

The filer must also establish that they acted in a responsible manner (e.g., filer exercised reasonable care in the course of business, filer took steps to avoid or mitigate the mistake), both before and after the mistake/failure occurred.

#### ***Significant Mitigating Factors***

If a filer seeks to defend its position of not providing a corrected Return for reasonable cause because of a “significant mitigating factor,” a filer would need to fall into the following categories:

- 1) Prior to the failure, the filer was never required to file this particular type of Return/Statement where the mistake occurred; or
- 2) The filer has established a history (either by not having incurred penalties in prior years, or if penalties were incurred the filer reduced those errors year after year) of complying with the information reporting requirement where the mistake occurred.

#### ***The Failure Arose from Events Beyond the Filer’s Control***

A filer may also seek a defense for failing to submit the correct Tax ID number of an employee if the mistake arose because of an event beyond the filer’s control. The unavailability of the business records must have been the cause of the delay, and a supervening event must have occurred. A supervening event includes, but is not limited to:

- 1) A fire or other casualty that damages or impairs the filer’s business records or process for filing business records

- 2) A statutory or regulatory change has a direct impact upon data processing that the change could not be complied with; or
- 3) The unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for filing the Return.

Despite these rules, filers should still file corrected Returns with corrected Tax ID numbers to avoid any potential penalties, as the IRS may disagree with the filer's justification for failing to file corrected Returns.

## How to Correct Paper Returns

Per the IRS, filers that submitted their Forms 1094-C and Forms 1095-C with errors should still file corrected returns as soon as possible. The instructions below outline how to file corrected returns.

### **Form 1094-C (Authoritative Transmittal) Corrections**

To correct information on a previously-filed Form 1094-C Authoritative Transmittal (identified in Line 19), follow these steps:

- 1) Fill out a new Form 1094-C completely with the correct information
- 2) Enter an "X" in the CORRECTED checkbox (Page 1 of the Form 1094-C, upper right hand corner); and
- 3) Submit the corrected return

Do *not* file any other documents, such as Form 1095-C, with the corrected Form 1094-C Authoritative Transmittal.

Do *not* file a Return correcting information on a Form 1094-C Non-Authoritative Transmittal.

### **Form 1095-C Corrections**

To correct information on a previously-filed Form 1095-C, follow these steps:

- 1) Fill out a new Form 1095-C completely with the correct information
- 2) Enter an "X" in the CORRECTED checkbox (Page 1 of the Form 1095-C, upper right hand corner)
- 3) Submit corrected return with a Form 1094-C Non-Authoritative Transmittal to the IRS (do not enter an "X" in the CORRECTED checkbox in the Form 1094-C); and
- 4) Furnish a corrected Form 1095-C to the employee (see below)

### **Furnishing Corrected Returns to Employees**

In most cases, the filer will furnish the employee with a copy of the corrected Form 1095-C return. If the filer used an Alternative Furnishing Method and provided an alternative statement to the employee, the filer must furnish a corrected statement to the employee if it made corrections to the information contained in Part I, the Applicable Large Filer Member Information (i.e., the filer's name, EIN, address, contact name or telephone number). If the filer is no longer eligible to use the Alternative Furnishing Method, it must furnish the employee with a corrected Form 1095-C and advise the employee that the corrected return replaces the previously furnished statement.

## How to Correct Electronically Filed Returns

### *Refiling Timely, Rejected Submissions*

If the AIR system rejected any transmissions or submissions, the filer/transmitter should submit replacement Returns within 60 days from the date of rejection, so the rejected Returns are treated as being timely filed.

If a filer submitted Returns and received an “Accepted with Errors” message, a filer may submit corrected Returns after June 30, 2016.

### *Electronic Corrections Process*

The AIR correction process should only be used for errors in Form 1094-C, Form 1095-B, or Form 1095-C discovered either by the filer/transmitter or the IRS. Note: Form 1094-B does not require corrections.

When an error is identified, you must use a Unique Submission Identifier (USID) and a Unique Record Identifier (URID) associated with the correction, which allows both the IRS and the transmitter to track the submission and transmission. The USID and URID format will look like this:

**USID = ReceiptId|SID**

**URID = ReceiptId|SID|RID**

If a correction is submitted, and a future error is identified, you must use a Unique ID associated with the correction of already corrected Returns, as original Returns may only be corrected once.

### *Corrections for Form 1094-C Only*

If corrections are only needed for the Form 1094-C, then a correction may be submitted alone, as follows:

- 1) File a corrected Form 1094-C, replacing the Corrected Unique Submission ID (CUSID) with the USID provided.

### *Corrections for Both Form 1094-C and Form 1095-C*

If corrections are needed for both Form 1094-C and Form 1095-C, the transmitter will follow these steps:

- 1) File a corrected Form 1094-C without attaching any Form 1095-Cs, replacing the CUSID with the USID provided; and
- 2) Separately file a Form 1094-C, complete Part I of the Form, and file with corrections to any Form 1095-Cs.

### *Correcting Entity Data on Both Form 1094-C and Form 1095-C*

Corrections to the entity information found on both Form 1094-C and Form 1095-C only need to be made once. You do not need to submit changes to every Form 1095-C, as the correction system will associate the appropriate entity information to existing returns.

For detailed directions on how to make corrections to electronically filed returns, and how to generate USIDs and URIDs, see IRS Publication 5156, Section 7.1, here:

[https://www.irs.gov/PUP/for\\_taxpros/software\\_developers/information\\_returns/Draft\\_Pub\\_5165\\_04\\_2015.pdf](https://www.irs.gov/PUP/for_taxpros/software_developers/information_returns/Draft_Pub_5165_04_2015.pdf)

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