

Rev. Proc. 98-36

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SECTION 1. PURPOSE

This revenue procedure informs those who participate in the Magnetic Media/Electronic Filing Program for Form 1040NR, U.S. Nonresident Alien Income Tax Return (“1040NR Program”), of their obligations to the Internal Revenue Service, taxpayers, and other participants. This revenue procedure updates and supersedes Rev. Proc. 97-28, 1997-1 C.B. 691.

SECTION 2. BACKGROUND AND CHANGES

.01 Section 1.6012-5 of the Income Tax Regulations provides that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1 (Income Tax), subject to the conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.02 For purposes of this revenue procedure, a magnetically or electronically filed Form 1040NR is a composite return consisting of data submitted on magnetic tape, floppy disk, or via modem (the “data portion”), and certain paper documents (the “paper portion”). The paper portion of the return consists of a Form 8453-NR, U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing, and other paper documents that cannot be filed magnetically or electronically. Form 8453-NR must be received by the Service before any composite return is complete (see section 5.07 of this revenue procedure). A composite return must contain the same information that a return filed completely on paper contains. See section 7 of this revenue procedure for procedures for completing Form 8453-NR.

.03 The Magnetic Media Project Office (“Project Office”, see section 17 of this revenue procedure for the address and telephone numbers) will periodically issue a list of the forms and schedules that can be magnetically or electronically filed.

.04 A Form 1040NR with a zero balance, balance due, or refund due may be magnetically or electronically filed.

.05 A 1997 Form 1040NR cannot be filed magnetically or electronically after

December 4, 1998, notwithstanding the fact that the taxpayer has been granted an extension to file beyond that date. Form 2688, Application for Additional Extension of Time To File U.S. Individual Income Tax Return, cannot be filed magnetically or electronically under the 1040NR Program.

.06 An amended tax return cannot be filed magnetically or electronically under the 1040NR Program. A taxpayer must file an amended tax return on paper in accordance with the instructions for Form 1040X, Amended U.S. Individual Income Tax Return.

.07 Upon request, the Project Office will provide technical information (file specifications, record layouts, and testing procedures) for filing Form 1040NR magnetically or electronically.

.08 This revenue procedure updates and supersedes Rev. Proc. 97-28. The updates include changes in the 1040NR Program, clarification of prior 1040NR Program statements, and additional guidance derived from other Service documents that relate to the 1040NR Program. Some of the updates are:

(1) a 1997 Form 1040NR cannot be filed magnetically or electronically after December 4, 1998, notwithstanding the fact that the taxpayer has been granted an extension to file beyond that date (section 2.05); and

(2) the complete paper copy of the return furnished to the taxpayer need not include the social security number of the paid preparer (section 8.01).

SECTION 3. 1040NR PROGRAM PARTICIPANTS—DEFINITIONS

.01 After acceptance into the 1040NR Program, as described in section 4 of this revenue procedure, a participant is referred to as a “1040NR Filer.”

.02 The 1040NR Filer categories are:

(1) 1040NR RETURN ORIGINATOR. A “1040NR Return Originator” is: (a) a “1040NR Return Preparer” who prepares tax returns, including Forms 8453-NR, for taxpayers who intend to have their returns magnetically or electronically filed; and/or (b) a “1040NR Return Collector” who accepts completed tax returns, including Forms 8453-NR, from taxpayers who intend to have their returns magnetically or electronically filed.

(2) SERVICE BUREAU. A "Service Bureau" receives tax return information on any media from a 1040NR Return Originator, formats the return information, and either (a) sends back the return information to the 1040NR Return Originator, or (b) forwards the return information to a Transmitter. A Service Bureau may send Forms 8453-NR to the Service.

(3) SOFTWARE DEVELOPER. A "Software Developer" develops software for the purposes of (a) formatting returns according to the Service's magnetic or electronic return filing specifications; and/or (b) filing returns magnetically or electronically directly with the Service. A Software Developer may also sell its software.

(4) TRANSMITTER. A "Transmitter" sends the data portion of a return directly to the Service.

.03 The 1040NR Filer categories are not mutually exclusive. For example, a 1040NR Return Originator can, at the same time, be considered a Transmitter, Software Developer, or Service Bureau depending on the function(s) performed.

SECTION 4. ACCEPTANCE INTO THE 1040NR PROGRAM

.01 Except as provided in sections 4.02 and 4.03 of this revenue procedure, a 1040NR Filer that has participated in the most recent 1040NR Program does not have to reapply to participate in the 1040NR Program. However, a 1040NR Filer that intends to function as a Transmitter or a Software Developer in the 1040NR Program must first successfully complete the testing referred to in section 4.06 of this revenue procedure. In addition, section 4.07 of this revenue procedure provides for the Service's issuance of credentials necessary for participation in the 1040NR Program.

.02 Applicants and 1040NR Filers must file a new Form MAR-8980, Application for Electronic/Magnetic Media Filing of Form 1040NR, with the Project Office if:

(1) the applicant has never participated in the 1040NR Program;

(2) the applicant has previously been denied participation in the 1040NR Program; or

(3) the applicant has been suspended from the 1040NR Program.

.03 To participate in the 1040NR Program, a 1040NR Filer in the most recent

1040NR Program must submit to the Project Office either a revised Form MAR-8980, or a letter containing the same information contained in the revised Form MAR-8980, if there is any change to the following information:

(1) the Firm name or Doing Business As (DBA) name;

(2) the business or mailing address;

(3) the contact person's name or telephone number; or

(4) the 1040NR Filer category.

.04 Applications described in this section 4.02 may be submitted at any time during the year.

.05 Revised applications described in this section 4.03 must be submitted within 30 days of the change(s) reflected on the revised Form MAR-8980 or in the letter.

.06 A 1040NR Filer may not submit tax returns under the 1040NR Program until 30 days after it has successfully completed the necessary testing administered by the Project Office.

.07 The Service will issue credentials to eligible applicants, 1040NR Filers that do not have to reapply pursuant to section 4.01 of this revenue procedure, and 1040NR Filers that comply with section 4.02 or 4.03 of this revenue procedure, provided they have first satisfactorily completed the testing described in section 4.06 of this revenue procedure if they intend to function as a Transmitter or Software Developer. No one may participate in the 1040NR Program without the following credentials:

(1) a letter of acceptance into the 1040NR Program; and

(2) a Magnetic Tape 1040NR Filer Identification Number (MTFIN).

.08 The following reasons may result in rejection of an application to participate in the 1040NR Program (this list is not all-inclusive):

(1) conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty or breach of trust;

(2) failure to timely and accurately file tax returns, including returns indicating that no tax is due;

(3) failure to timely pay any tax liabilities;

(4) assessment of tax penalties;

(5) suspension/disbarment from practice before the Service;

(6) disreputable conduct or other facts that would reflect adversely on the 1040NR Program;

(7) misrepresentation on an application;

(8) suspension or rejection from the 1040NR Program in a prior year;

(9) unethical practices in return preparation;

(10) stockpiling returns prior to official acceptance into the 1040NR Program (see section 5.10 of this revenue procedure);

(11) knowingly and directly or indirectly employing or accepting assistance from any firm, organization, or individual that is prohibited from applying to participate in the 1040NR Program (see section 13.09 of this revenue procedure) or that is suspended from participating in that Program (see section 12.07 of this revenue procedure). This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the 1040NR Program; or

(12) knowingly and directly or indirectly accepting employment as an associate, correspondent, or as a subagent from, or sharing fees with, any firm, organization, or individual that is prohibited from applying to participate in the 1040NR Program (see section 13.09 of this revenue procedure) or that is suspended from participating in that Program (see section 12.07 of this revenue procedure). This includes any individual whose actions resulted in the rejection or suspension of a corporation or a partnership from the 1040NR Program.

SECTION 5. RESPONSIBILITIES OF A 1040NR FILER

.01 To ensure that complete returns are accurately and efficiently filed, a 1040NR Filer must comply with all publications and notices of the Service related to magnetic or electronic filing. Currently, these publications and notices include:

(1) Procedures for Magnetic Media Filing of U.S. Nonresident Alien Income Tax Returns, Form 1040NR (available from the Project Office);

(2) File Specifications and Record Layouts for Magnetic Media Filing of U.S. Nonresident Alien Income Tax Returns, Form 1040NR (available from the Project Office); and

(3) Postings to the Electronic Filing System Bulletin Board (EFS Bulletin Board).

.02 A 1040NR Filer must maintain a high degree of integrity, compliance, and accuracy.

.03 A 1040NR Filer may accept returns for magnetic or electronic filing only from the taxpayer filing the return, a representative of the taxpayer filing the return, or from another 1040NR Filer.

.04 If a 1040NR Filer charges a fee for the submission of a magnetically or electronically filed tax return, the fee may not be based on a percentage of the refund amount or any other amount from the tax return. A 1040NR Filer may not charge a separate fee for Direct Deposit. See section 9 of this revenue procedure for a discussion of Direct Deposit.

.05 A 1040NR Filer must submit a revised Form MAR-8980 to the Project Office within 30 days of when any of the conditions or changes described in section 4.03 of this revenue procedure occur.

.06 A 1040NR Filer must notify the Project Office within 30 days of discontinuing its participation in the 1040NR Program. This does not preclude reapplication in the future.

.07 A 1040NR Filer must ensure that it promptly processes returns submitted to it for magnetic or electronic filing. See sections 5.10, 5.16, and 5.17 of this revenue procedure. However, a 1040NR Filer that receives a return for magnetic or electronic filing on or before the due date of the return must ensure that the return is filed on or before that due date (including extensions, see section 5.08 of this revenue procedure). A composite return is not considered filed until the data portion of the tax return is acknowledged by the Service as accepted for processing and a completed and signed Form 8453-NR is received by the Service. However, if the data portion of a return is successfully transmitted on or shortly before the due date and the 1040NR Filer complies with section 7.01 of this revenue procedure, the return will be deemed timely filed. If the data portion of a return is transmitted on or shortly before the due date but is ultimately rejected, the return will be deemed timely filed if the 1040NR Filer and the taxpayer comply with section 5.14 of this revenue procedure. In the case of a balance due return, see section

10 of this revenue procedure for instructions on how to make a timely payment of tax.

.08 Unless the Service grants an extension of time to file, a 1040NR Filer must ensure that the return for any individual is received by the Service on or before:

(1) April 15 if the individual was an employee and received wages subject to U.S. federal income tax withholding; or

(2) June 15 if the individual did not receive such wages.

However, section 2.05 of this revenue procedure provides that a composite return cannot be filed after December 4, 1998.

.09 A 1040NR Filer must ensure against the unauthorized use of its MTFIN. A 1040NR Filer must not transfer its MTFIN by sale, merger, loan, gift, or otherwise to another entity.

.10 A 1040NR Filer is responsible for ensuring that stockpiling does not occur. Prior to official acceptance of the 1040NR Filer into the 1040NR Program, stockpiling means collecting returns from taxpayers. After official acceptance, stockpiling means:

(1) in the case of a 1040NR Return Originator, waiting for more than three calendar days after receiving the necessary information to submit a return to a Transmitter or Service Bureau, or

(2) in the case of a Transmitter, waiting for more than ten calendar days after receiving the necessary information to send the data portion of the return to the Service.

.11 A 1040NR Filer that functions as a Return Originator must:

(1) comply with the procedures for completing Form 8453-NR described in section 7 of this revenue procedure;

(2) comply with the procedures described in section 10 of this revenue procedure for handling a balance due return;

(3) furnish the taxpayer with a copy of the signed Form 8453-NR (except for multiple return filing as described in section 7.01(5) of this revenue procedure) and, in the case of a prepared or corrected return, a copy of the paper portion of the return;

(4) while returns are being filed, retain and, if requested, make available to the Service the following material at the business address from which a return was accepted for magnetic or electronic filing:

(a) a copy of the signed Form 8453-NR, paper copies of Forms W-2, Wage and Tax Statement, W-2G, Certain Gambling Winnings, 1099-R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc., and the paper portion of the taxpayer's return;

(b) a complete copy of the data portion of the taxpayer's return (may be retained on computer media) that can be readily and accurately converted into magnetic or electronic data that the Service can process; and

(c) the acknowledgement file received from the Service or from a Transmitter;

(5) retain until the end of the calendar year in which a return was filed and make available to the Service upon request the materials described in section 5.11(4) of this revenue procedure, at the business address from which a return was accepted for magnetic or electronic filing or from the contact person named on Form MAR-8980.

.12 A 1040NR Return Originator who is the paid preparer of a magnetically or electronically filed Form 1040NR must also retain for the prescribed amount of time the materials described in § 1.6107-1(b) that are required to be kept by an income tax return preparer.

.13 A 1040NR Return Originator must identify the paid preparer (if any) in the appropriate field of the data portion of the return, in addition to ensuring that the paid preparer signed Form 8453-NR. If Form 8453-NR is not signed by the paid preparer, the 1040NR Return Originator must attach a copy of the Form 1040NR originally signed by the paid preparer. This copy must be marked "COPY-DO NOT PROCESS" to prevent duplicate filings.

.14 If the data portion of a taxpayer's return is acknowledged as rejected by the Service, and the reason for the rejection cannot be rectified by making nonsubstantive changes as described in section 6.02(3) of this revenue procedure, the 1040NR Return Originator, within 24 hours of receiving the rejection, must take all reasonable steps to tell the taxpayer that the taxpayer's return has not been filed. If the taxpayer chooses to have the data portion of the return resubmitted magnetically or electronically, and the 1040NR Return Originator successfully

works with the Project Office to correct the problems causing the data portion of the return to be rejected, the return will be accepted as timely filed. A new Form 8453–NR may be required (see section 7 of this revenue procedure). However, even when no new Form 8453–NR is required, the Transmitter must submit a photocopy of the original Form 8453–NR with the rejected file or return and mark the photocopy “Retransmitted.” If the Project Office determines that the data portion of a return cannot be accepted for processing or the taxpayer chooses not to have the rejected data portion of the return resubmitted magnetically or electronically, the taxpayer must file a paper return by the later of:

- (1) the due date (with regard to any extensions of time to file) of the return; or
- (2) ten calendar days after the Service gives notification that the data portion of the return is rejected or that the data portion of the return cannot be accepted for processing.

The paper return should include an explanation of why the return is being filed after the due date.

.15 A 1040NR Return Originator must use the taxpayer’s address in the data portion of the return. In addition, a 1040NR Return Originator must not put its address as the taxpayer’s address in the data portion of the return.

.16 A 1040NR Filer that functions as a Service Bureau must:

- (1) deliver all data portions of composite returns to a Transmitter or return them to the 1040NR Return Originator who gave the data portions of the returns to the Service Bureau within three calendar days of receipt;
- (2) retrieve the acknowledgement file from the Transmitter within one calendar day of receipt by the Transmitter;
- (3) send the acknowledgement file to the 1040NR Return Originator (whether related or not) within one work day of retrieving the acknowledgement file;
- (4) if the Service Bureau processes Forms 8453–NR, send back to the 1040NR Return Originator any return and Form 8453–NR that needs correction, unless the correction is described in section 7.02(1) of this revenue procedure;
- (5) accept tax return information only from 1040NR Filers;
- (6) include its MTFIN and the 1040NR Return Originator’s MTFIN with

all return information the Service Bureau forwards to a Transmitter or sends back to the 1040NR Return Originator;

- (7) retain each acknowledgement file received from a Transmitter until the end of the calendar year in which the composite return was filed;
- (8) if requested, serve as a contact point between its client 1040NR Return Originator and the Service; and
- (9) if requested, provide the Service with a list of each client 1040NR Return Originator.

.17 A 1040NR Filer that functions as a Transmitter must:

- (1) send to the Service all data portions of composite returns within ten calendar days of receipt;
- (2) match the acknowledgement file to the original transmission file and send the acknowledgement file to the 1040NR Return Originator or the Service Bureau (whether or not the 1040NR Return Originator or the Service Bureau are related to the Transmitter) within five calendar days after receipt of the acknowledgement file from the Service;
- (3) retain an acknowledgement file received from the Service until the end of the calendar year in which the composite return was filed;

(4) immediately contact the Project Office for further instructions if an acknowledgement of acceptance for processing has not been received by the Transmitter within 14 calendar days of transmission, or if a Transmitter receives an acknowledgement for a return that was not transmitted on the designated transmission;

- (5) promptly correct any transmission error that causes a data portion of a composite return to be rejected;
- (6) contact the Project Office for assistance if a data portion of a composite return has been rejected after three transmission attempts; and
- (7) ensure the security of all transmitted data.

.18 A Transmitter that provides transmission services to another 1040NR Filer must, in addition to the items covered in section 5.17 of this revenue procedure, also:

- (1) accept composite returns for transmission to the Service only from an accepted 1040NR Filer; and
- (2) use its assigned MTFIN when filing returns.

.19 A 1040NR Filer that functions as a Software Developer must:

- (1) promptly correct any software error that causes a data portion of a composite return to be rejected;
- (2) promptly distribute any software correction made to its software packages to all 1040NR Filers utilizing these packages; and
- (3) not incorporate into its software a Service-assigned production password.

.20 In addition to the specific responsibilities described in this section, a 1040NR Filer must meet all the requirements in this revenue procedure to keep the privilege of participating in the 1040NR Program.

SECTION 6. PENALTIES

.01 Penalties for Disclosure or Use of Information.

(1) A 1040NR Filer, except a Software Developer, is a tax return preparer (“Preparer”) under the definition of § 301.7216–1(b) of the Regulations on Procedure and Administration. A Preparer is subject to a criminal penalty for unauthorized disclosure or use of tax return information. See § 7216 of the Internal Revenue Code and § 301.7216–1(a). In addition, § 6713 establishes civil penalties for unauthorized disclosure or use of tax return information.

(2) Under § 301.7216–2(h), disclosure of tax return information among accepted 1040NR Filers for the purpose of preparing a return is permissible. For example, a 1040NR Return Originator may pass on tax return information to a Service Bureau and/or a Transmitter for the purpose of having the data portion of a composite return formatted and sent to the Service. However, if the tax return information is disclosed or used in any other way, a Service Bureau and/or a Transmitter may be subject to the penalties described in section 6.01(1) of this revenue procedure.

.02 Other Preparer Penalties.

(1) Preparer penalties may be asserted against an individual or firm who meets the definition of an income tax return preparer under §§ 7701(a)(36) and 301.7701–15. Preparer penalties that may be asserted under appropriate circumstances include, but are not limited to, those set forth in §§ 6694, 6695, and 6713.

(2) Under § 301.7701-15(d), 1040NR Return Collectors, Service Bureaus, Software Developers, and Transmitters are not income tax return preparers for the purpose of assessing most preparer penalties as long as their services are limited to “typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.”

(3) If a 1040NR Return Collector, Service Bureau, Software Developer, or Transmitter alters the return information in a nonsubstantive way, this alteration will be considered to come under the “mechanical assistance” exception described in § 301.7701-15(d)(1). A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction that falls within one of the following tolerances:

(a) the “Total tax”, “Total payments”, “Refund”, or “Amount you owe” on Form 8453-NR differs from the corresponding amount on the data portion of the composite return by no more than \$7;

(b) the “Total effectively connected income” amount shown on Form 8453-NR differs from the corresponding amount on the data portion of the composite return by no more than \$25; or

(c) dropping cents and rounding to whole dollars.

(4) If a 1040NR Return Collector, Service Bureau, or Transmitter alters the return information in a substantive way, rather than having the taxpayer alter the return, the 1040NR Return Collector, Service Bureau, or Transmitter will be considered to be an income tax return preparer for purposes of § 7701(a)(36).

(5) If a 1040NR Return Collector, Service Bureau, Transmitter, or the product of a Software Developer, goes beyond mechanical assistance, any of these parties may be held liable for income tax return preparer penalties. See Rev. Rul. 85-189, 1985-2 C.B. 341, (which describes a situation where a Software Developer was determined to be an income tax return preparer and subject to certain preparer penalties).

.03 Other Penalties. In addition to the above specified provisions, the Service reserves the right to assert all appropriate civil and criminal penalties, including preparer, nonpreparer, and disclosure penalties, against a 1040NR Filer as warranted under the circumstances.

SECTION 7. FORM 8453-NR, U.S. NONRESIDENT ALIEN INCOME TAX DECLARATION FOR MAGNETIC MEDIA FILING

.01 Procedures for Completing Form 8453-NR.

(1) Form 8453-NR must be completed in accordance with the instructions for Form 8453-NR.

(2) The taxpayer’s name, taxpayer identification number, tax return information, and direct deposit of refund information in the data portion of the composite return must be identical to the information on the Form 8453-NR signed by the taxpayer (or by the taxpayer’s authorized representative as described in section 7.01(5) of this revenue procedure) and provided for submission to the Service.

(3) A 1040NR Filer, a financial institution, or any other entity associated with the magnetic or electronic filing of a taxpayer’s return must not put its address on Form 8453-NR or anywhere in the data portion of a return.

(4) Except for multiple return filing as described in section 7.01(5) of this revenue procedure, after the composite return has been prepared and before the return is submitted, the taxpayer must verify the information on the data portion of the composite return and on Form 8453-NR, and must sign Form 8453-NR.

(5) A 1040NR Filer must submit a Form 8453-NR to the Project Office with each magnetically or electronically filed return. A single Form 8453-NR (inscribed with the language “See attached Multiple Return Information Listing”) may be used for a multiple return filing if the person who signs Form 8453-NR has authorization, either by a specific power of attorney or as a responsible representative or agent under § 1.6012-3(b), to sign each of the returns included in the multiple return filing. A person who makes a multiple return filing must attach to Form 8453-NR an information page(s) titled “Form 8453-NR for Multiple Returns—Tax Return Information Listing” at the top of the page(s). Below the title, the multiple return 1040NR Filer must provide his or her name and address. The next item on the page(s) must be a list that includes every taxpayer’s name control, taxpayer identification number, and the information shown on lines one through five on Form 8453-NR, for each return included in a multiple return filing.

(6) If a 1040NR Filer functions as a 1040NR Return Originator, the 1040NR Filer must sign the 1040NR Return Originator’s Declaration on Form 8453-NR.

(7) If the 1040NR Filer is also the paid preparer, the 1040NR Filer must check the “Paid Preparer” box and sign the 1040NR Return Originator Declaration on Form 8453-NR.

.02 Corrections to Form 8453-NR.

(1) A new form 8453-NR is not required for a nonsubstantive change. A nonsubstantive change is limited to a correction that does not exceed the tolerances, described in section 7.02(2) of this revenue procedure for arithmetic errors, a transposition error, a misplaced entry, or a spelling error. The incorrect nonsubstantive information must be neatly lined through on the Form 8453-NR and the correct data entered next to the lined through entry. Also the individual making the correction must initial the correction.

(2) The tolerances for section 7.02(1) of this revenue procedure are:

(a) the “Total effectively connected income” differs from the amount on the data portion of the composite return by more than \$25; or

(b) the “Total tax”, the “Total payments”, the “Refund”, or the “Amount you owe” differs from the amount on the data portion of the composite return by more than \$7.

(3) If the 1040NR Return Originator makes a substantive change to the data portion of the return after Form 8453-NR has been signed by the taxpayer, but before it is transmitted to the Service, the 1040NR Return Originator must have all the necessary parties described above sign a new Form 8453-NR that reflects the corrections before the return is transmitted.

(4) Dropping cents and rounding to whole dollars does not constitute a substantive change or alteration to the return unless the amount differs by more than the above tolerances. All rounding should be accomplished in accordance with the instructions in the Form 1040NR tax package.

.03 Missing Form 8453-NR. If the Service determines that a Form 8453-NR is missing, the 1040NR Return Originator must provide the Service with a replacement. A 1040NR Return Originator must also provide a copy of the Form(s) W-2, W-2G, 1099R, and all other attachments to the Form 8453-NR.

.04 *Substitute Form 8453-NR*. If a substitute Form 8453-NR is used, it must be approved by the Service prior to use. See Rev. Proc. 97-54, 1997-50 I.R.B. 8.

SECTION 8. INFORMATION A 1040NR FILER MUST PROVIDE TO THE TAXPAYER

.01 The 1040NR Return Originator must furnish the taxpayer with a complete paper copy of the taxpayer's return (except for multiple return filing as described in section 7.01(5) of this revenue procedure). However, the copy need not contain the social security number of the paid preparer. See Rev. Rul. 78-317, 1978-2 C.B. 335. A complete copy of the taxpayer's return includes:

(1) Form 8453-NR and other paper documents that cannot be magnetically or electronically transmitted, and

(2) a printout of the data portion of the composite return. See section 2.02 of this revenue procedure. The data portion of the composite return can be contained on a replica of an official form or on an unofficial form. However, on an unofficial form, data entries must be referenced to the line numbers on an official form.

.02 The 1040NR Return Originator must advise the taxpayer to retain a complete copy of the return and any supporting material.

.03 The 1040NR Return Originator must advise the taxpayer that an amended return, if needed, must be filed as a paper return and mailed to the Philadelphia Service Center.

.04 The 1040NR Return Originator must, upon request, provide the taxpayer with the date the data portion of the taxpayer's composite return was acknowledged as accepted for processing by the Service.

.05 A 1040NR Return Originator must advise taxpayers that they can call the local IRS TeleTax number to inquire about the status of their tax refund. The 1040NR Return Originator should also advise taxpayers to wait at least three weeks from the acceptance date of the data portion of the composite return before calling the TeleTax number.

.06 If a taxpayer chooses to use an address other than his or her home address on the return, the 1040NR Return Originator must inform the taxpayer that the address on the data portion of the com-

posite return, once processed by the Service, will be used to update the taxpayer's address of record. The Internal Revenue Service uses the taxpayer's address of record for various notices that are required to be sent to a taxpayer's "last known address" under the Internal Revenue Code and for refunds of overpayments of tax (unless otherwise specifically directed by the taxpayer, such as by Direct Deposit).

SECTION 9. DIRECT DEPOSIT OF REFUNDS

.01 The Service will ordinarily process a request for Direct Deposit but reserves the right to issue a paper refund check.

.02 The Service does not guarantee a specific date by which a refund will be directly deposited into the taxpayer's financial institution account. The taxpayer's account must be with a financial institution located in the United States.

.03 Neither the Service nor the Financial Management Service (FMS) is responsible for the misapplication of a Direct Deposit that is caused by error, negligence, or malfeasance on the part of the taxpayer, 1040NR Filer, financial institution, or any of their agents.

.04 A 1040NR Return Originator must:

(1) advise taxpayers of the option to receive their refund by paper check or direct deposit;

(2) not charge a separate fee for Direct Deposit;

(3) accept any Direct Deposit election to any eligible financial institution designated by the taxpayer;

(4) ensure that the taxpayer is eligible to choose Direct Deposit;

(5) verify that the Direct Deposit information requested on Part II of Form 8453-NR was entered correctly and that the information entered is the information transmitted on the data portion of the composite return;

(6) caution the taxpayer that once a data portion of a composite return has been accepted for processing by the Service:

(a) the Direct Deposit election cannot be rescinded;

(b) the Routing Transit Number (RTN) of the financial institution cannot be changed; and

(c) the taxpayer's account number cannot be changed; and

(7) advise the taxpayer that refund information is available by calling the IRS TeleTax number. See section 8.05 of this revenue procedure.

SECTION 10. BALANCE DUE RETURNS

.01 A magnetically or electronically filed balance due return is submitted to the Philadelphia Service Center in the same manner that a refund or zero balance return is submitted. A balance due return is not complete unless and until the Service receives a Form 8453-NR completed and signed by the taxpayer (or by the taxpayer's authorized representative as described in section 7.01(5) of this revenue procedure).

.02 A taxpayer who magnetically or electronically files a balance due return must make a full and timely payment of any tax that is due. Failure to make full payment of any tax that is due on or before April 15, 1998 (for individuals who were employees and received wages subject to U.S. federal income tax withholding), or June 15, 1998 (for individuals who were not employees receiving wages subject to U.S. federal income tax withholding), will result in the imposition of interest and may result in the imposition of penalties.

SECTION 11. ADVERTISING STANDARDS FOR 1040NR FILERS AND FINANCIAL INSTITUTIONS

.01 A 1040NR Filer must comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. Any claims concerning faster refunds by virtue of magnetically or electronically filing returns must be consistent with the language in official Service publications.

.02 A 1040NR Filer must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting.

.03 A 1040NR Filer must not use the Service's name, "Internal Revenue Service," or "IRS" within a firm's name.

.04 A 1040NR Filer must not use improper or misleading advertising in relation to the 1040NR Program (including the time frames for refunds).

.05 A 1040NR Filer using promotional material or logos provided by the Service must comply with all Service instructions pertaining to the promotional materials or logos.

.06 A 1040NR Filer using the Direct Deposit name and logo must comply with the following:

(1) The name "Direct Deposit" will be used with initial capital letters or all capital letters.

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy.

(3) The color or size of the Direct Deposit logo/graphic may be changed when used in advertising pieces.

.07 Advertising materials must not carry the FMS, IRS, or other Treasury seals.

.08 Advertising for a cooperative 1040NR return project (public/private sector) must clearly state the names of all cooperating parties.

.09 If a 1040NR Filer uses radio or television broadcasting to advertise, the broadcast must be pre-recorded. The 1040NR Filer must keep a copy of the pre-recorded advertisement for a period of at least 36 months from the date of the last transmission or use.

.10 If a 1040NR Filer uses direct mail or fax communications to advertise, the 1040NR Filer must retain a copy of the actual mailing or fax, along with a list or other description of the firms, organizations or individuals to whom the communication was mailed, faxed, or otherwise distributed for a period of at least 36 months from the date of the last mailing, fax, or distribution.

.11 Acceptance to participate in the 1040NR Program does not imply endorsement by the Service or FMS of the software or quality of services provided.

SECTION 12. MONITORING AND SUSPENSION OF A 1040NR FILER

.01 The Service will monitor a 1040NR Filer for conformity with this revenue procedure. Before suspending a 1040NR Filer, the Service may issue a warning letter that describes specific corrective action for deviations from this revenue pro-

cedure. However, the Service can immediately suspend, without notice, a 1040NR Filer from the 1040NR Program. In most circumstances, a suspension from participation in the 1040NR Program is effective as of the date of the letter informing the 1040NR Filer of the suspension.

.02 The Service will monitor the timely receipt of Forms 8453-NR, as well as their overall legibility.

.03 The Service will monitor the quality of the 1040NR Filer's submissions throughout the filing season. The Service will also monitor data portions of composite returns and tabulate rejections, errors, and other defects. If quality deteriorates, the 1040NR Filer may receive a warning from the Service.

.04 The Service will monitor complaints about a 1040NR Filer and issue a warning or suspension letter as appropriate.

.05 The Service reserves the right to suspend a 1040NR Filer from participation in the 1040NR Program for violating any provision of this revenue procedure. Generally, the Service will advise a suspended 1040NR Filer concerning the requirements for reacceptance into the 1040NR Program. The following reasons may lead to a warning letter and/or suspension of a 1040NR Filer from the 1040NR Program (this list is not all-inclusive):

(1) the reasons listed in section 4.08 of this revenue procedure;

(2) deterioration in the format of individual submissions;

(3) unacceptable cumulative error or rejection rate;

(4) untimely received, illegible, incomplete, missing, or unapproved substitute Forms 8453-NR;

(5) stockpiling returns at any time while participating in the 1040NR Program;

(6) failure on the part of a Transmitter to provide a 1040NR Return Originator or Service Bureau with acknowledgment files within five calendar days after receipt from the Service;

(7) significant complaints about a 1040NR Filer's performance in the 1040NR Program;

(8) failure on the part of a 1040NR Filer to ensure that no other entity uses its assigned MTFIN;

(9) having more than one MTFIN for the same business entity at the same loca-

tion (the business entity is generally the entity that reports on its return the income derived from magnetic or electronic filing), unless the Service has issued more than one MTFIN to a business entity;

(10) failure on the part of a 1040NR Filer to cooperate with the Service's efforts to monitor 1040NR Filers and investigate filing abuse;

(11) failure on the part of a 1040NR Filer to properly use the standard/non-standard W-2 indicator;

(12) failure on the part of a Service Bureau or a Transmitter to use its assigned MTFIN when filing returns;

(13) failure on the part of the Transmitter to include a Service Bureau's MTFIN in the transmission of a return submitted by a Service Bureau;

(14) failure on the part of a Service Bureau or a Transmitter to include the 1040NR Return Originator's MTFIN as part of a return that the 1040NR Return Originator submits to the Service Bureau or the Transmitter;

(15) violation of the advertising standards described in section 11 of this revenue procedure;

(16) failure to maintain and make available records as described in sections 5.11(4) and (5) of this revenue procedure;

(17) accepting a tax return for magnetic or electronic filing either directly or indirectly from a firm, organization, or individual (other than the taxpayer who is submitting his or her return) that is not in the 1040NR Program;

(18) submitting information on the data portion of the composite return that is not identical to the information on the Form 8453-NR; or

(19) failure to timely submit a revised Form MAR-8980 notifying the Service of changes described in section 4.02 or 4.03 of this revenue procedure.

.06 The Service may list in the Internal Revenue Bulletin, district office listings, district office newsletters, on the EFS Bulletin Board, or in other appropriate publications, the name of any entity that is suspended from the 1040NR Program and the effective date of that suspension.

.07 If a participant is suspended from participating in the 1040NR Program, the period of suspension includes the remainder of the calendar year in which the suspension occurs plus the next two calendar

years. A suspended participant may submit a new application for the application period immediately preceding the end of the suspension.

SECTION 13. ADMINISTRATIVE REVIEW PROCESS FOR DENIAL OF PARTICIPATION IN THE 1040NR PROGRAM

.01 An applicant that has been denied participation in the 1040NR Program has the right to an administrative review. During the administrative review process, the denial of participation remains in effect.

.02 In response to the submission of a Form MAR-8980, the Project Office will either (1) accept an applicant into the 1040NR Program, or (2) issue a proposed letter of denial that explains to the applicant why the Service proposes to reject the application to participate in the 1040NR Program.

.03 An applicant that receives a proposed letter of denial may mail or deliver, within 30 calendar days of the date of the proposed letter of denial, a written response to the Project Office. The applicant's response must address the Project Office's explanation for proposing the denial to participate.

.04 Upon receipt of an applicant's written response, the Project Office will reconsider its proposed letter of denial. The Project Office may (1) withdraw its proposed letter of denial and admit the applicant into the 1040NR Program, or (2) finalize the proposed denial letter.

.05 If an applicant receives a final denial letter from the Project Office, the applicant is entitled to an appeal, in writing, to the Director of Practice.

.06 The appeal must be mailed or delivered to the Project Office within 30 calendar days of the date of the denial letter. An applicant's written appeal must contain a detailed explanation, with supporting documentation, of why the denial should be reversed.

.07 The Project Office, upon receipt of a written appeal to the Director of Practice, will forward to the Director of Practice its file on the applicant and the materials described in section 13.06 of this revenue procedure. The Project Office will forward these materials to the Director of Practice within 15 calendar days of receipt of the applicant's written appeal.

.08 Failure to respond within either of the 30-day periods described in sections 13.03 and 13.06 of this revenue procedure irrevocably terminates an applicant's right to an administrative review or appeal.

.09 If an application for participation in the 1040NR Program is denied, the applicant is ineligible to submit a new application for two years from the application date of the denied application.

SECTION 14. ADMINISTRATIVE REVIEW PROCESS FOR SUSPENSION FROM THE 1040NR PROGRAM

.01 A 1040NR Filer that has been suspended from participation in the 1040NR Program has the right to an administrative review. During the administrative review process, the suspension remains in effect.

.02 If a 1040NR Filer receives a suspension letter, the 1040NR Filer may mail or deliver, within 30 calendar days of the date of the suspension letter, a detailed written explanation, with supporting documentation, of why the suspension letter should be withdrawn. This written response should be sent to the Project Office.

.03 Upon receipt of the 1040NR Filer's written response, the Project Office will reconsider its suspension of the 1040NR Filer. The Project Office may either (1) withdraw its suspension letter and reinstate the 1040NR Filer, or (2) affirm the suspension.

.04 If a 1040NR Filer receives a letter affirming the suspension, the 1040NR Filer is entitled to an appeal, in writing, to the Director of Practice.

.05 The appeal must be mailed or delivered to the Project Office within 30 calendar days of the date of the suspension letter. The 1040NR Filer's written appeal must contain detailed reasons, with supporting documentation, for reversal of the suspension.

.06 The Project Office, upon receipt of a written appeal to the Director of Practice, will forward to the Director of Practice its file on the 1040NR Filer and the material described in section 14.05 of this revenue procedure. The Project Office will forward these materials to the Director of Practice within 15 calendar days of the receipt of a 1040NR Filer's written request for appeal.

.07 Failure to appeal within either of the 30-day periods described in sections 14.02 and 14.05 of this revenue procedure irrevocably terminates a 1040NR Filer's right to an appeal.

SECTION 15. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-28, 1997-1 C.B. 691, is superseded.

SECTION 16. EFFECTIVE DATE

This revenue procedure is effective May 20, 1998.

SECTION 17. PROJECT OFFICE INFORMATION

All questions regarding this revenue procedure should be directed to:

Internal Revenue Service
Philadelphia Service Center
ATTN: DP-115-Magnetic Media
Project Office
11601 Roosevelt Blvd.
Philadelphia, PA 19154
U.S.A.

The telephone number of this office is (215) 516-7533 (not a toll-free number) or 800-829-6945 (a toll-free number).