

**CALIFORNIA LAWYERS ASSOCIATION**

**TAXATION SECTION**

**2025 WASHINGTON DELEGATION**

**PROPOSED CHANGES TO IRM 3.42.5.14.5(3)  
(FORMS FOR 1040 MODERNIZED E-FILE)**

This proposal was prepared by Adam Brewer.

Contact Person: Adam Brewer  
AB Tax Law APC  
501 W Broadway Ste 800  
San Diego, CA 92101  
Ph: (619) 591-9500  
e: [adam@abtaxlaw.com](mailto:adam@abtaxlaw.com)

## **Executive Summary**

Did somebody say efficiency? Perhaps no activity within the Internal Revenue Service is less efficient than the processing of paper filed income tax returns.

However, presently IRM §3.42.5.14.5(3) provides that the service will only accept electronically filed returns for the last three income tax years. At this moment, the policy enables Taxpayers to file and the Service to receive and process electronically filed returns for income tax returns for 2022, 2023, and 2024.

On the other hand, Policy Statement 5-133 provides that an individual Taxpayer is considered to be in current compliance with individual income tax filing requirements when they have filed the last six years of income tax returns.

To be considered in current compliance, it therefore is not uncommon for Taxpayers to be required to file an income tax return (or three) that is not within the three-year window currently accepted for e-filing.

The process of receiving and assessing paper filed returns can take months or years depending on the backlog at the Service. The delay in processing then creates a bottleneck that can prevent the resolution of combo cases – tax cases where the Taxpayer has both delinquent returns and balances due.

By enabling e-filing for the at a minimum the most recent six tax years, the Service could ensure that all Taxpayers can obtain filing compliance with only electronically filed returns while furthering the Service's goals related to efficiency.

## Discussion

### 1. Benefits of E-Filing

Taxpayers, Practitioners, and the Service benefit from E-filing. In the Service's own words:

"Here are five great reasons you should e-file your tax return:

- **Accurate and complete.** E-file is the best way to file an accurate and complete tax return. The tax software does the math for you, and it helps you avoid mistakes.
- **Safe and secure.** IRS e-file meets strict guidelines and uses the best encryption technology. The IRS has safely and securely processed more than 1.2 billion e-filed individual tax returns since the program began.
- **Faster refunds.** E-filing usually brings a faster refund because there is nothing to mail and your return is less likely to have errors, which take longer to process. The IRS issues most refunds in less than 21 days. The fastest way to get your refund is to combine e-file with direct deposit into your bank account.
- **Payment options.** If you owe taxes, you can e-file early and set an automatic payment date anytime on or before the April 15 due date. You can pay by check or money order, or by debit or credit card. You can also transfer funds electronically from your bank account.
- **E-file's easy.** You can e-file your federal return through IRS Free File, the free tax preparation program available only at IRS.gov. You can also use commercial tax software or ask your tax preparer to e-file your return."<sup>1</sup>

### 2. Summary of Relevant Law

There are two applicable, but incongruent rules that govern this issue.

IRM 3.42.5.14.5(3) provides for what tax years individual income tax returns may be submitted electronically. Presently, Taxpayers may only file electronic returns for 2022, 2023, and 2024.

Policy Statement 5-133 provides when a Taxpayer is considered to be in current compliance with individual income tax filing requirements. Presently, an individual Taxpayer is considered to be in current compliance when they have filed the last six income tax returns or 2019, 2020, 2021, 2022, 2023, and 2024.

Policy Statement 5-133 is of extra importance for taxpayer who owe or will owe the Service and seek to resolve their balances by Installment Agreement (IRM 5.14.1.4.2(17)), Currently Not Collectible status (IRM 5.19.17.2.4(6)), or an Offer in Compromise (IRM 5.8.1). In each instance, failure to have had the returns assessed does not necessarily prevent resolution by one of the methods mentioned above, but it does add significant complications.

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<sup>1</sup> *Several great reasons to e-file your federal tax return.* Internal Revenue Service. <https://www.irs.gov/pub/irs-utl/OC-Severalgreatreasonstoefileyourfederaltaxreturn.pdf>. Available February 24, 2025.

### **3. Scope of Problem**

The exact number of Taxpayers who filed delinquent returns outside the three-year window provided for in IRM 3.42.5.14.5(3) is not presently known. The Service's Data Unit does not collect that information or is not able to provide details.

Anecdotally, delinquent return cases are a significant part of my own practice. It is not uncommon to encounter Taxpayers who failed to file income tax returns because of illness, family issues, job loss, mental health crises, addiction, business loss, or any number of other reasons like the death of their CPA. In each of these matters, the inability to electronically file all required returns adds a level of complication and delay.

One wrinkle on this issue is the Service's failure to process some paper filed returns during the pandemic. These returns continue to raise issues for Taxpayers with balances due to the Internal Revenue Service or who are still entitled to a refund for Tax Year 2021.

### **Conclusion**

To improve operational efficiency, the Service should expand IRM §3.42.5.14.5(3) to allow the electronic filing of the last six years of individual income tax returns.

To minimize the technological demands, at a minimum the service should allow 2022 MeF to remain functional while adding 2025 MeF, then 2026, then 2027. At that time, the current year and prior five years would be eligible for e-filing.

While this would require more resources within the MeF program, it would greatly reduce the demand on resources within several other units of the IRS including return processing, accounts management, and collections.