

# Important 2023 W-2 & 1099 Changes

(As of April 7, 2023)

## Important E-File Threshold Change:

The IRS and Treasury final regulations on e-file for businesses has been released. **The final regulations require filers with 10 or more forms to electronically file, Federal Copy A, for the upcoming 2023 tax year (to be filed in 2024). This regulation includes the total for all aggregated forms filed (W-2, 1099, etc.).** There are other provisions in the regulations that may impact you. Visit [federalregister.gov](https://www.federalregister.gov) for more information.

## W-2

*Penalties increased*—Failure to file and failure to furnish penalties and penalties for intentional disregard of filing and payee statement requirements have increased due to adjustments for inflation. The higher penalty amounts apply to returns required to be filed after December 31, 2023. The new penalty amounts are listed below:

- \$60 per information return if filed correctly within 30 days of the due date; the maximum penalty is \$630,500 per year (\$220,500 for small businesses).
- \$120 per information return if filed correctly more than 30 days after the due date but by August 1; the maximum penalty is \$1,891,500 per year (\$630,500 for small businesses).
- \$310 per information return if filed after August 1, did not file corrections, or did not file required information returns; the maximum penalty is \$3,783,000 per year (\$1,261,000 for small businesses).
- If any failure to timely file a correct information return or provide a correct payee statement is due to intentional disregard of the filing and furnishing requirements, the penalty is at least \$630 per information return with no maximum penalty.

## 1042-S - Reprogramming required.

*Withholding and Reporting starting in 2023:*

- *Income code 57*—Income code 57 was added to the 2022 Form 1042-S for use by brokers (starting in 2023) to report amounts realized and related withholding from transfers of publicly traded partnership (PTP) interests. Brokers should use this code to report amounts realized paid to a recipient for sales of PTP interests that are subject to reporting and when withholding applies to a PTP distribution.
- *Income code 58*—New income code 58 was added for nominees to report when they are unable to determine the characterization of income associated with a PTP distribution, and therefore, withhold on the distribution in the absence of a qualified notice specifying the income attributable to the distribution. Forms 1042-S reporting this income code are required to be issued with respect to each PTP making the distribution (reporting the PTP in the payer's box (including payer's chapter 3 status code 38)).
- *Chapter 3 status code 39*—New chapter 3 status code 39 (Disclosing Qualified Intermediary (QI)) was added for when a broker, PTP, or nominee makes a payment of an amount realized or PTP distribution to a QI acting as a disclosing QI (reporting the disclosing QI's information in boxes 15a through 15i of the form).
- *Recipient copies*—A requirement was added that a broker, PTP, or nominee making a payment of an amount realized or PTP distribution to a QI acting as a disclosing QI provide to the disclosing QI a recipient copy of the Form 1042-S issued to the QI's account holder. A similar requirement is added for the issuance by a broker of a recipient copy of

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Form 1042-S to a nonqualified intermediary paid an amount realized subject to withholding when the broker issues Forms 1042-S to the account holders of the nonqualified intermediary receiving the amount realized (even though 10% withholding is applied to the full amount of the payment).

- Starting in 2023, PTPs (and their nominees) and brokers selling PTP interests are permitted to use the reimbursement and set-off procedures.

*Revised reporting with respect to territory financial institutions*—The chapter 3 status codes for withholding agents making payments subject to chapter 3 withholding to territory financial institutions (FIs) have been removed (former chapter 3 status codes 03 and 04 for territory FIs treated as (or not treated as U.S. persons) as well as the chapter 3 exemption code (code 09) for payments made to territory FIs treated as U.S. persons. For these cases, withholding agents should use the chapter 3 status and exemption codes applicable to U.S. branches, and should continue to report using the applicable chapter 4 status codes for a territory FI for chapter 4 purposes.

#### **1096** - *Reprogramming required.*

*Adjusted placement of form boxes*—A shaded box was added after the box for Form 1099-CAP adjusting the position of all the following form boxes.

#### **1099-PATR** - *Reprogramming required.*

*Continuous-use form and instructions*—Form 1099-PATR has been converted from an annual revision to continuous use. The form and instructions will be updated as needed.

#### **1099-QA** - *Reprogramming required.*

*Electronic reporting*—Form 1099-QA can be filed electronically beginning January 1, 2023.

*Continuous-use form and instructions*—Form 1099-QA has been converted from an annual revision to continuous use. The form and instructions will be updated as needed.

#### **5498-QA**

*Contributions*—Contributions (including any contributions from a section 529 program, but not including contributions of the designated beneficiary's compensation income) made to the ABLE account in 2023 cannot exceed \$17,000.