

This newsletter is from JD Choi of Tax Technologies, Inc. to tax professionals whose interests include improving the tax management processes.

## Inside This Issue

- Have you received “the notice” from the IRS?

The IRS has issued 2,100 notices to corporate taxpayers for failing to include Form 5471s in their transmission file. This issue of the Tax Technologies, Inc. newsletter provides updates to the e-file and paper tax return discrepancy issue.

## Have you received “the notice” from the IRS?

I previously reported that the IRS has started sending notices to taxpayers regarding late filed Form 5471s and its plans to expand upon the penalties associated with late filed Forms 926, 5472, 8858, and 8865. This statement was confirmed by the IRS during a conference call held on October 16, 2008. During that call, the **IRS stated that 2,100 soft letters have been sent to taxpayers for failure to file Form 5471s and it intends to enforce the penalty provision for late filing (\$10,000 per each Form 5471s omitted in the return) automatically starting January 1, 2009.** ([See, IRS statement.](#))

Worse yet, most companies do not even realize that the tax return they submitted by means of an e-file transmission file is significantly different from their paper return and did not include Form 5471s. In fact, most companies did not realize that their transmission file was missing Form 5471s until they received the soft letter from the Department of the Treasury.

Based on the latest statistical data that has been made available by the Department of the Treasury’s Statistics of Income Division (SOI), 10,939 companies have filed a U.S. Corporate Income Tax Return (Form 1120) with Form 5471s attached (2004 statistics). Given these figures, it is estimated that **approximately 20 percent of all U.S. Corporate Income Tax Returns filed through an e-file were missing Form 5471s in the transmission file unbeknownst to the taxpayers that filed the tax return.** The IRS conceded that it cannot produce accurate statistics on missing Form 5471s.

Due to the fact that approximately 20 percent of all U.S. Corporate Income Tax Returns filed are missing Form 5471s, and given the IRS is intending to enforce the penalty provision effective January 1, 2009, there will be many instances where penalties are assessed for the returns with missing Form 5471s. **Thus, corporate taxpayers need to review the content of their transmission file *even if* the return was already e-filed and accepted in order to avoid penalties.**

## Here is what you need to do to avoid the late filing penalty:

1. Review the content of your transmission file to identify if any components of the return are missing. We recommend using our [eFileReviewer service](#). ([See how eFileReviewer works.](#))
2. If the missing component is identified as a result of the review, prepare an amended return with the corrected content.
3. Review the content of the new transmission file (for example, amended return) to ensure that the previously missing components are properly included in the transmission file.

4. Transmit the completed transmission file before December 31, 2008.

The IRS is planning to update its Web site to provide filing procedures. However, it was mentioned during the conference call on October 16<sup>th</sup> that re-filing the tax return with complete content is considered an amended return and should follow the amended return procedures provided for the specific tax year involved as part of modernized e-filing.

The IRS did not specify the format of the “soft letter”. However, we have seen letters from the SOI stating that Form 5471s has not been filed with the taxpayer’s tax return. We believe this letter from the SOI is the soft letter to which the IRS is referring. In all cases we examined, we have identified that the original transmission file submitted to the IRS did not include all Form 5471s, thereby being subject to potential penalties.

Also during the conference call, it was made clear that the IRS, software vendors, and service providers cannot pinpoint where the failure occurred. One service provider requested that the IRS notify software vendors of their defects to prevent the error from re-occurring based on false assumptions that the failure can be attributed only to a software problem. However, the IRS has made it clear that it has worked with the software vendors and that it cannot conclude that the missing returns were solely due to software issues.

There will be a significant level of liability and loss of confidence for service providers that produced paper tax returns that they presented to their clients as the tax returns filed with the IRS, yet, the e-file did not contain all the content, thereby resulting in potential non-filing or late filing penalties for their clients. Whether the tax returns were prepared by third-party vendors or in-house, the result is the same. Ultimately taxpayers will be held responsible for the content of the tax return (in this case the content of the e-file) and will be subject to the penalties.

The participants have discussed various alternatives to solving the discrepancy between the paper tax return and the e-file content issue. Basically, there are three potential problems – under-inclusion, over-inclusion or incorrect content. We all confirmed that all three issues exist in the current e-file content. From the penalty perspective, the under-inclusion presents the most significant problem to the taxpayers as the under-inclusion of tax return content can result in non-filing or late filing penalties (such as missing Form 5471s), as well as the denial of key tax elections (missing statement and elections).

Despite the attempts of many participants to explore various ways to ensure that all of the content of the tax return produced on paper is included in the e-file, no solution proposed by the group appeared as a viable option. **The only solution that everyone agreed to as a way to address the problem was to convert the transmission file to paper tax forms and statements, so that taxpayers can review the content of their transmission file.** This is exactly what our clients are doing using [eFileReviewer](#).

A significant part of the conference call was devoted to the review of the transmission file content as part of return processing by altering the current return preparation and review process. Because the review of the e-file content must be done after the transmission file is produced to make sure the transmission file precisely contains the content a taxpayer intended it to have, participants (especially the service providers) felt that taxpayers may not have enough time to review the content of their transmission file. However, most of the participants agreed that it is the *only* way to assure that transmission files contain exactly what taxpayers intended when they produced it.

TTI has advocated the position that the content of the transmission file should be reviewed before it is transmitted to ensure that correct content is being submitted to the IRS. We have developed [eFileReviewer](#), which converts the content of a transmission file (including PDF attachments) to legible PDF tax forms, so that all of our users can review the content of their returns before they are submitted to the IRS. The key is that [eFileReviewer](#) makes the review of transmission file content easy, comprehensive, and efficient.

We offer our [eFileReviewer service](#) to help companies review the content of their transmission files *before or after* the file is submitted to the IRS.

### [Watch a video demonstration of the eFileReviewer process](#)

#### How to Use TTI's Service

For more information on how to begin the eFileReviewer process, visit [www.taxtechnologies.com](http://www.taxtechnologies.com) or contact us directly at 1-866-239-4884 for more information.

---

#### Tax Technologies Institute Training Schedule:

During the remainder of 2008, the Tax Technologies Institute will offer **FAS 109 – Tax Accounting Basics**, a 2-day Best Practices hands-on training course on the following dates:

- November 17-18
- December 1-2
- December 15-16

Also during the remainder of 2008, the Tax Technologies Institute will offer **International Compliance Basics**, a 2-day Best Practices hands-on training course on the following dates:

- November 12-13
- November 24-25
- December 10-11
- December 29-30

The Tax Technology Institute is located at 336 West 37<sup>th</sup> Street between 8<sup>th</sup> and 9<sup>th</sup> Avenues in New York City. Although TTI provides computers for use in hands-on training, participants are encouraged to bring their own laptops with their own data.

As part of our comprehensive business solutions offerings to our clients, we also provide unlimited training at no cost to Tax Series users.

Click the following hyperlink for details related to the training courses:

<http://www.taxtechnologies.com/training/default.aspx>

**Training from the Tax Technologies Institute is designed to help maximize the productivity, efficiency, and effectiveness of corporate tax resources.**

#### About Tax Technologies, Inc.

Tax Technologies, Inc. produces industry leading corporate income tax compliance and provision software as well as offers related services. Please visit <http://www.taxtechnologies.com> and learn more about our software solutions and services."

---

The content of this e-mail is reproduced in the "Newsletter" section of TTI's Web site ([www.TaxTechnologies.com](http://www.TaxTechnologies.com)) one week after its release to TTI subscribers.

Regards,

JD Choi  
CEO, Tax Technologies, Inc.  
201-387-9451