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criteria for a determination under paragraph (g)(4) of this section.

(k) *Penalties*—(1) *Failure to withhold.* See A–2 of §35a.9999–3 for rules relating to penalties applicable to a payor who fails to withhold on reportable interest and dividend payments made to a payee subject to backup withholding.

(2) *False certification*—(i) *Criminal penalty under section 7205(b).* If any individual willfully makes a false certification under section 3406(d) (1) or (2), then that individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(ii) *Civil penalty under section 6682*—(A) *In general.* In addition to any criminal penalty provided by law, if any individual makes a statement under section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24 of the Internal Revenue Code and, as of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. The penalty is due upon notice and demand and pursuant to section 6682 collection is not subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. See section 6682.

(B) *Waiver of penalty.* The payee may obtain a waiver (in whole or part) of the penalty imposed under section 6682(a) and paragraph (k)(2)(ii)(A) of this section if it is established to the satisfaction of the Internal Revenue Service that the taxes imposed under subtitle A of the Internal Revenue Code with respect to the payee for the taxable year in which the false certification was made are equal to or less than the sum of—

(*1*) The credits against taxes allowed by part IV of subchapter A of chapter 1 of the Internal Revenue Code, and

(*2*) The payments of estimated tax which are considered payments on account of such taxes.

(C) *Procedure for seeking a waiver.* To request a waiver under section 6682(b) and paragraph (k)(2)(ii)(B) of this section, the payee must submit to the Internal Revenue Service a written statement with supporting documents to establish all the facts necessary in order to obtain the waiver. The statement must be signed by the person that otherwise would be subject to the penalty imposed by section 6682(a) and paragraph (k)(2)(ii)(A) of this section and must contain a declaration that it is made under penalties of perjury.

(3) *Delay of assessment.* If a payee institutes or maintains a suit with the United States Tax Court primarily to delay assessment and the payee's position is frivolous or groundless, or the payee unreasonably failed to pursue available administrative remedies, the court may award up to $5,000 in damages under section 6673. The damages will be assessed against and collected from the payee in the same manner as the underlying tax.

(l) *Effective Date.* This section is effective until December 31, 1996.

[T.D. 8137, 52 FR 13432, Apr. 23, 1987, as amended at 60 FR 66134, Dec. 21, 1995; 61 FR 11308, Mar. 20, 1996]

§ 35a.9999–0 Effective date.

See §31.9999–0 of this chapter for applicability dates for §§35a.9999–1 through 35a.9999–5.

[T.D. 8734, 62 FR 53494, Oct. 14, 1997]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53494, Oct. 14, 1997, §35a.9999–0 was added, effective Oct. 14, 1997, through Jan. 1, 1999. At 63 FR 72183, Dec. 31, 1998, the effective date was extended until Jan. 1, 2000. By T.D. 8856, 64 FR 73408, Dec. 30, 1999, the effective date was extended until Jan. 1, 2001.

§ 35a.9999–1 Questions and answers concerning the due diligence requirement and the certification requirements in connection with backup withholding and other related issues.

The following questions and answers principally concern the due diligence exception to the penalty on payors of reportable interest or dividend payments for failure to provide the payee's correct taxpayer identification number on certain information returns and the certification requirements in connection with backup withholding under the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369):