

the annual return until July 30, 1982. In this case, the person failing to comply with section 6104(d) within the prescribed time is required to pay \$760 for complying with section 6104(d) 76 days late.

(3) *Cross reference.* For the penalty for willful failure to comply with section 6104(d), see § 301.6685-1.

(d) *Special rules.* For purposes of section 6652(d) and this section—

(1) *Person.* The term “person” means any officer, director, trustee, employee, member, or other individual whose duty it is to perform the act in respect of which the violation occurs.

(2) *Liability.* If more than one person (as defined in subparagraph (1) of this paragraph (d)) is liable for a failure to file or to comply with section 6652(d) (2) or (3), all such persons shall be jointly and severally liable with respect to such failure.

(e) *Manner of payment.* The amount imposed under section 6652(d) and this section on any exempt organization, trust, or person (as defined in paragraph (d)(1) of this section) shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(f) *Showing of reasonable cause.* No amount imposed by section 6652(d) shall apply with respect to a failure to file or comply under this section if it is established to the satisfaction of the district director or director of the internal revenue service center that such failure was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement containing a declaration by the appropriate person (as defined in paragraph (d)(1) of this section), or in his absence, by any officer, director, or trustee of the organization, that the statement is made under the penalties of perjury, setting forth all the facts alleged as reasonable cause.

(g) *Group returns.* If a central organization is authorized to file a group return on behalf of two or more of its local organizations for the taxable year in accordance with paragraph (d) of § 1.6033-2 (Income Tax Regulations), the responsibility for timely filing of such a return is placed upon the central organization for purposes of this section. Consequently, the amount imposed by

section 6652(d)(1) for failure to file the group return shall be paid by the central organization and the amount imposed by section 6652(d)(2) for failure to file the group return within the time prescribed by the Commissioner shall be paid by the person or persons responsible for filing the group return.

(h) *Effective date.* This section shall apply for taxable years beginning after December 31, 1969.

[T.D. 7127, 36 FR 11503, June 15, 1971, as amended by T.D. 8026, 50 FR 20758, May 20, 1985]

§ 301.6652-3 Failure to file information with respect to employee retirement benefit plan.

(a) *Amount imposed—(1) Annual registration statement.* The plan administrator (within the meaning of section 414(g)) of an employee retirement benefit plan defined in § 301.6057-1(a)(3) is liable for the amount imposed by section 6652(e)(1) in each case in which there is a failure to file information relating to the deferred vested retirement benefit of a plan participant, as required by section 6057(a) and § 301.6057-1, at the time and place and in the manner prescribed therefor (determined without regard to any extension of time for filing). The amount imposed by section 6652(e)(1) on the plan administrator is \$1 for each participant with respect to whom there is a failure to file the required information, multiplied by the number of days during which the failure continues. However, the total amount imposed by section 6652(e)(1) on the plan administrator with respect to a failure to file on behalf of a plan for a plan year shall not exceed \$5,000.

(2) *Notification of change in status.* The plan administrator (within the meaning of section 414(g)) of an employee retirement benefit plan defined in § 301.6057-1(a)(3) is liable for the amount imposed by section 6652(e)(2) in each case in which there is a failure to file a notification of a change in plan status, as described in section 6057(b) and § 301.6057-2, at the time and place and in the manner prescribed therefor (determined without regard to any extension of time for filing). The amount imposed by section 6652(e)(2) on the plan administrator is \$1 for each day during

which the failure to so file a notification of a change in plan status continues. However, the total amount imposed by section 6652(e)(2) on the plan administrator with respect to a failure to file a notification of a change in plan status shall not exceed \$1,000.

(3) *Annual return of funded plan of deferred compensation.* Under section 6652(f) the amount described in this subparagraph is imposed in each case in which there is a failure to file the annual return described in section 6058(a) on behalf of a plan described in §301.6058-1(a) at the time and in the manner prescribed therefor (determined with regard to any extension of time for filing). The employer maintaining the plan is liable for the amount imposed with respect to a failure to so file the annual return in each case in which the employer must file the return under §301.6058-1(a). The plan administrator (within the meaning of section 414(g)) is liable for the amount imposed in each case in which the plan administrator must file the return under §301.6058-1(a). In the case of an individual retirement account or annuity described in section 408, the individual described in §301.6058-1(d)(2) who must file the annual return under §301.6058-1(d) is liable for the amount imposed with respect to a failure to so file the annual return. The amount imposed is \$10 for each day during which the failure to file the annual return on behalf of a plan for a year continues. However, the total amount imposed with respect to a failure to file on behalf of a plan for any year shall not exceed \$5,000.

(4) *Actuarial statement in case of mergers.* The plan administrator (within the meaning of section 414(g)) is liable for an amount imposed by section 6652(f) in each case in which there is a failure to file the actuarial statement described in section 6058(b) at the time and in the manner prescribed therefor (determined with regard to any extension of time for filing). The amount imposed by section 6652(f) on the plan administrator is \$10 for each day during which the failure to file the statement with respect to a merger, consolidation or transfer of assets or liabilities continues. However, the amount imposed by section 6652(f) on the plan adminis-

trator with respect to a failure to file the statement with respect to a merger, consolidation or transfer shall not exceed \$5,000.

(5) *Information relating to certain trusts and annuity and bond purchase plans.* Under section 6652(f) the amount described in this subparagraph is imposed in each case in which there is a failure to file a return or statement required by section 6047 at the time and in the manner prescribed therefor in §1.6047-1 (determined with regard to any extension of time for filing). The amount is imposed upon the trustee of a trust described in section 401(a), custodian of a custodial account or issuer of an annuity contract, as the case may be (see §1.6047-1(a)(1) (i) and (ii)). The amount imposed by section 6652(f) is \$10 for each day during which the failure to file with respect to a payee for a calendar year continues. However, the amount imposed with respect to a failure to file with respect to a payee for a calendar year shall not exceed \$5,000.

(b) *Showing of reasonable cause.* (1) No amount imposed by section 6652(e) shall apply with respect to a failure to file information relating to the deferred vested retirement benefit of a plan participant under section 6057(a), or a failure to give notice of a change in plan status under section 6057(b), if it is established to the satisfaction of the director of the internal revenue service center at which the information or notice is required to be filed that the failure was due to reasonable cause.

(2) No amount imposed by section 6652(f) shall apply with respect to a failure to file a return or statement required by section 6058 or 6047, or a failure to provide material items of information called for on such a return or statement, if it is established to the satisfaction of the appropriate district director or the director of the internal revenue service center at which the return or statement is required to be filed that the failure was due to reasonable cause.

(3) An affirmative showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the appropriate individual that

the statement is made under the penalties of perjury.

(c) *Joint liability.* If more than one person is responsible for a failure to comply with sections 6057 (a) or (b) or section 6058 (a) or (b) or section 6047, all such persons shall be jointly and severally liable with respect to the failure.

(d) *Manner of payment.* An amount imposed under section 6652 (e) or (f) and this section shall be paid in the same manner as a tax upon the issuance of notice and demand therefor.

(e) *Effective dates—(1) Annual registration statement.* With respect to the annual registration statement described in section 6057(a), this section is effective—

(i) In the case of a plan to which only one employer contributes, for plan years beginning after December 31, 1975, with respect to participants who separate from service covered by the plan in plan years beginning after that date, and

(ii) In the case of a plan to which more than one employer contributes, for plan years beginning after December 31, 1977, and with respect to participants who complete two consecutive 1-year breaks in service under the plan in service computation periods beginning after December 31, 1974.

(2) *Notification of change in status.* With respect to the notification of change in plan status required by section 6057(b), this section is effective with respect to a change in status occurring within plan years beginning after December 31, 1975.

(3) *Annual return of employee benefit plan.* With respect to the annual return of employee benefit plan required by section 6058(a), this section is effective for plan years beginning after September 2, 1974.

(4) *Actuarial statement in case of mergers.* With respect to the actuarial statement required by section 6058(b), this section is effective with respect to mergers, consolidations or transfers of assets or liabilities occurring after September 2, 1974.

(5) *Information relating to certain trusts and annuity and bond purchase plans.* With respect to reports or statements required to be filed by section 6047 and the regulations thereunder, this sec-

tion is effective with respect to calendar years ending after September 2, 1974.

[T.D. 7551, 43 FR 29293, July 7, 1978, and T.D. 7561, 43 FR 38006, Aug. 25, 1978; 44 FR 24285, Apr. 25, 1979]

§ 301.6653-1 Failure to pay tax.

(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment, as defined in section 6653(c)(1) and paragraph (c)(1) of this section, of any income tax imposed by subtitle A of the Code, or gift tax imposed by chapter 12, subtitle B, of the Code, is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* (1) If any part of any underpayment of tax, as defined in section 6653(c) and paragraph (c) of this section, required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

(2) If a 50 percent addition to the tax for fraud is assessed under section 6653(b) with respect to an underpayment—

(i) The addition to the tax under section 6651, relating to failure to file a tax return, will not be assessed with respect to the same underpayment, and

(ii) In the case of the income taxes imposed by subtitle A and the gift tax imposed by chapter 12 of subtitle B, the 5 percent addition to the tax under section 6653(a), relating to negligence and intentional disregard of rules and regulations, will not be assessed with respect to the same underpayment.

(c) *Definition of underpayment—(1) Income, estate, gift, and chapter 41, 42, 43, and 44 taxes.* In the case of income, estate, gift, and chapter 41, 42, 43, and 44 taxes, an underpayment for purposes of section 6653 and this section is—

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, or chapter 41, 42, 43,