

liable for penalties of \$25,000 for failing properly to maintain A's list of investors (\$50 × 500 persons). A would not be liable for any penalties.

Q-7: If an organizer or seller is subject to a penalty with respect to a tax shelter under section 6708, may the organizer or seller also be liable for other fines or penalties with respect to the tax shelter?

A-7: Yes. The penalty imposed by section 6708 is in addition to any other penalty provided by law. If, for example, an organizer of a tax shelter is subject to a penalty under section 6700 for promoting an abusive tax shelter, the organizer also would be liable for any applicable penalties for failing properly to maintain a list for the tax shelter. Similarly, if an organizer or seller fails to furnish a list upon request by the Internal Revenue Service, the organizer or seller may be subject both to the fine under section 7203 for the willful failure to supply information, and to the penalty for failing properly to maintain a list for the tax shelter.

Q-8: When is the penalty under section 6708 effective?

A-8: The penalty under section 6708 applies with respect to any interest in a tax shelter which is required to be included on a list under section 6112. See A-22 of § 301.6112-1T.

(Secs. 6112 and 7805, Internal Revenue Code of 1954 (98 Stat. 681; 68A Stat. 917; 26 U.S.C. 6112 and 7805))

[T.D. 7969, 49 FR 34204, Aug. 29, 1984]

§ 301.6712-1 Failure to disclose treaty-based return positions.

(a) *Penalty imposed.* A taxpayer who fails in a material way to disclose one or more positions taken for a taxable year, as required by section 6114 and the regulations thereunder, is subject to a separate penalty for each failure to disclose a position taken with respect to each separate payment or separate income item in the amount of—

(1) For a corporation taxable as such under the Code \$10,000; or

(2) For all other taxpayers, \$1,000.

The penalty imposed by this section may be imposed more than once for a single taxable year if a taxpayer has failed to disclose one or more positions taken with respect to more than one

separate payment or separate income item and may be imposed in addition to any other penalty imposed by law. For this purpose, separate payments or income items of the same type (*e.g.*, interest payments) received from the same ultimate payor (*e.g.*, the obligor on the note) will be treated as separate payments or income items (and not aggregated). However, for purposes of determining the number of separate penalties to be imposed under this section, the District Director shall have the discretion to aggregate separate payments or income items, in whole or in part, in accordance with the rules for aggregation of such items for purposes of reporting, as described in § 301.6114-1(d).

(b) *Penalty waived.* Pursuant to the authority contained in section 6712(b) of the Code, the penalty imposed by paragraph (a) of this section may be waived, in whole or in part, if it is established to the satisfaction of the Assistant Commissioner (International), the District Director or the Director of the Internal Revenue Service Center that the taxpayer's failure to disclose the required information was not due to willful neglect. An affirmative showing of lack of willful neglect must be made in the form of a written statement that sets forth all the facts alleged to show lack of willful neglect and contains a declaration by such person that the statement is made under the penalties of perjury.

(c) *Manner of payment.* The penalty set forth in paragraph (a) of this section shall be paid in the same manner as tax upon the issuance of a notice and demand thereof.

(d) *Effective date.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extension) occurs after December 31, 1988.

[T.D. 8292, 55 FR 9441, Mar. 14, 1990]

§ 301.6721-0 Table of Contents.

In order to facilitate the use of §§ 301.6721-1 through 6724-1, this § 301.6721-0 lists the paragraph headings contained in these sections.

§ 301.6721-1 Failure to file correct information returns.

(a) Imposition of penalty.

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- (1) General rule.
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 - (f) Higher penalty for intentional disregard of requirement to file timely correct information returns.
 - (1) Application of section 6721(e).
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- (a) Imposition of penalty.
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 - (2) Failures subject to the penalty.
- (b) Exception for inconsequential errors or omissions.
 - (1) In general.
 - (2) Errors or omissions that are never inconsequential.
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 - (c) Higher penalty for intentional disregard of requirement to furnish timely correct payee statements.
 - (1) Application of section 6722(c).
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- (d) Definitions.
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§ 301.6723-1 Failure to comply with other information reporting requirements.

- (a) Imposition of penalty.
 - (1) General rule.
 - (2) Failures subject to the penalty.
 - (3) Exception for inconsequential errors or omissions.
 - (4) Specified information reporting requirement defined.
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§ 301.6724-1 Reasonable cause.

- (a) Waiver of the penalty.
 - (1) General rule.
 - (2) Reasonable cause defined.
 - (b) Significant mitigating factors.
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 - (d) Responsible manner.
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 - (ii) First annual solicitation.
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 - (iv) Additional requirements.
 - (v) Failures to which a solicitation relates.
 - (vi) Exceptions and limitations.
 - (2) Manner of making annual solicitations—by mail or telephone.
 - (i) By mail.
 - (ii) By telephone.
 - (f) Acting in a responsible manner—special rules for incorrect TINs.
 - (1) In general.
 - (i) Initial solicitation.
 - (ii) First annual solicitation.
 - (iii) Second annual solicitation.
 - (iv) Additional requirements.
 - (2) Manner of making annual solicitation if notified pursuant to section 3406(a)(1)(B) and the regulations thereunder.
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- (5) Exceptions and limitations.
- (g) Due diligence safe harbor.
 - (1) In general.
 - (2) Special rules relating to TINs.
 - (3) Effective dates.
- (h) Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991.
 - (1) In general.
 - (2) Special rule on TINs.
 - (i) [Reserved]
 - (j) Failures to which this section relates.
 - (k) Examples.
 - (1) [Reserved]
 - (m) Procedure for seeking a waiver.
 - (n) Manner of payment.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, as amended by T.D. 8734, 62 FR 53496, Oct. 14, 1997]

§ 301.6721-1 Failure to file correct information returns.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of \$50 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (g) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed \$250,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a *de minimis* number of failures. See paragraph (e) of this section for lower limitations to the \$250,000 maximum penalty. See paragraph (f) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (a)(1) of § 301.6724-1 for waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6721(a) and

paragraph (a)(1) of this section apply are—

(i) A failure to file an information return on or before the required filing date (“failure to file timely”), and

(ii) A failure to include all of the information required to be shown on the return or the inclusion of incorrect information (“failure to include correct information”). A failure to file timely includes a failure to file in the required manner, for example, on magnetic media or in other machine-readable form as provided under section 6011(e). However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement) or in the case of a partnership with more than 100 partners, more than 100 information returns (the 100-threshold requirement) (collectively, the threshold requirements). Each Schedule K-1 considered in applying the 100-threshold requirement will be treated as a separate information return. These threshold requirements apply separately to each type of information return required to be filed. Further, these threshold requirements apply separately to original and corrected returns. Thus, for example, if a filer files 300 returns on Form 1099-DIV and later files 70 corrected returns on Form 1099-DIV, the corrected returns may be filed either on the prescribed paper form (because they fall below the 250-threshold requirement) or on magnetic media or other machine-readable form. Filers who are required to file information returns on magnetic media and who file such information returns electronically are considered to have satisfied the magnetic media filing requirement. Except as provided in paragraph (c)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms and form instructions). A failure to include information in the correct format may be