[T.D. 7907, 48 FR 38231, Aug. 23, 1983]

Additions to the Tax, Additional Amounts, and Assessable Penalties

ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

§ 301.6651–1 Failure to file tax return or to pay tax.

(a) *Addition to the tax*—(1) *Failure to file tax return.* In case of failure to file a return required under authority of—

(i) Subchapter A, chapter 61 of the Code, relating to returns and records (other than sections 6015 and 6016, relating to declarations of estimated tax, and part III thereof, relating to information returns);

(ii) Subchapter A, chapter 51 of the Code, relating to distilled spirits, wines, and beer;

(iii) Subchapter A, chapter 52 of the Code, relating to cigars, cigarettes, and cigarette papers and tubes; or

(iv) Subchapter A, chapter 53 of the Code, relating to machine guns, destructive devices, and certain other firearms; and

The regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director or the director of the service center to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent thereof if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under this subparagraph shall be reduced by the amount of the addition under subparagraph (2) of this paragraph for any month to which an addition to tax applies under both subparagraphs (1) and (2) of this paragraph (a).

(2) *Failure to pay tax shown on return.* In case of failure to pay the amount shown as tax on any return (required to be filed after December 31, 1969, without regard to any extension of time for filing thereof) specified in subparagraph (1) of this paragraph (a), on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the district director, or, as provided in paragraph (a) of this section, the Assistant Regional Commissioner (Alcohol, Tobacco and Firearms), the director of the service center, to be due to reasonable cause and not to willful neglect. Except as provided in paragraph (a)(4) of this section, the amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) *Failure to pay tax not shown on return.* In the case of failure to pay any amount of any tax required to be shown on a return specified in paragraph (a)(1) of this section that is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of the notice and demand (10 business days if the amount assessed and shown on the notice and demand equals or exceeds $100,000) with respect to any notice and demand made after December 31, 1996, there will be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the district director or the director of the service center to be due to reasonable cause and not to willful neglect. Except as provided in paragraph (a)(4) of this section, the amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. For purposes of this paragraph (a)(3), see § 301.6601–1(f)(5) for

the definition of *calendar day* and *business day*.

(4) *Reduction of failure to pay penalty during the period an installment agreement is in effect*—(i) *In general.* In the case of a return filed by an individual on or before the due date for the return (including extensions)—

(A) The amount added to tax for a month or fraction thereof is determined by using 0.25 percent instead of 0.5 percent under paragraph (a)(2) of this section if at any time during the month an installment agreement under section 6159 is in effect for the payment of such tax; and

(B) The amount added to tax for a month or fraction thereof is determined by using 0.25 percent instead of 0.5 percent under paragraph (a)(3) of this section if at any time during the month an installment agreement under section 6159 is in effect for the payment of such tax.

(ii) *Effective date.* This paragraph (a)(4) applies for purposes of determining additions to tax for months beginning after December 31, 1999.

(b) *Month defined.* (1) If the date prescribed for filing the return or paying tax is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file or pay tax continues shall constitute a month for purposes of section 6651.

(2) If the date prescribed for filing the return or paying tax is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return or paying tax, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(3) If a return is not timely filed or tax is not timely paid, the fact that the date prescribed for filing the return or paying tax, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or a legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(c) *Showing of reasonable cause.* (1) Except as provided in subparagraphs (3) and (4) of this paragraph (b), a taxpayer who wishes to avoid the addition to the tax for failure to file a tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the district director or the director of the service center with whom the return is required to be filed; *Provided,* That where special tax returns of liquor dealers are delivered to an alcohol, tobacco and firearms officer working under the supervision of the Regional Director, Bureau of Alcohol, Tobacco and Firearms, such statement may be delivered with the return. If the district director, the director of the service center, or, where applicable, the Regional Director, Bureau of Alcohol, Tobacco and Firearms, determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in § 1.6161–1(b) of this chapter) if he paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including

the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of his assets and anticipated income will be insufficient to pay his tax, has not exercised ordinary business care and prudence in providing for the payment of his tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of his tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay his tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

(2) In determining if the taxpayer exercised ordinary business care and prudence in providing for the payment of his tax liability, consideration will be given to the nature of the tax which the taxpayer has failed to pay. Thus, for example, facts and circumstances which, because of the taxpayer's efforts to conserve assets in marketable form, may constitute reasonable cause for nonpayment of income taxes may not constitute reasonable cause for failure to pay over taxes described in section 7501 that are collected or withheld from any other person.

(3) If, for a taxable year ending on or after December 31, 1995, an individual taxpayer satisfies the requirement of §1.6081–4(a) of this chapter (relating to automatic extension of time for filing an individual income tax return), reasonable cause will be presumed, for the period of the extension of time to file, with respect to any underpayment of tax if—

(i) The excess of the amount of tax shown on the individual income tax return over the amount of tax paid on or before the regular due date of the return (by virtue of tax withheld by the employer, estimated tax payments, and any payment with an application for extension of time to file pursuant to §1.6081–4 of this chapter) is no greater than 10 percent of the amount of tax shown on the individual income tax return; and

(ii) Any balance due shown on the individual income tax return is remitted with the return.

(4) If, for a taxable year ending on or after December 31, 1972, a corporate taxpayer satisfies the requirements of §1.6081–3 (a) (relating to an automatic extension of time for filing a corporation income tax return), reasonable cause shall be presumed, for the period of the extension of time to file, with respect to any underpayment of tax if—

(i) The amount of tax (determined without regard to any prepayment thereof) shown on Form 7004, or the amount of tax paid on or before the regular due date of the return, is at least 90 percent of the amount of tax shown on the taxpayer's Form 1120, and

(ii) Any balance due shown on the Form 1120 is paid on, or before the due date of the return, including any extensions of time for filing.

(d) *Penalty imposed on net amount due*—(1) *Credits against the tax.* The amount of tax required to be shown on the return for purposes of section 6651(a)(1) and the amount shown as tax on the return for purposes of section 6651(a)(2) shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

(2) *Partial payments.* (i) The amount of tax required to be shown on the return for purposes of section 6651(a)(2) shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid after the date prescribed for payment and on or before the first day of such month.

(ii) The amount of tax stated in the notice and demand for purposes of section 6651(a)(3) shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the first day of such month.

(e) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 shall be assessed with respect to an underpayment of tax if a 50-percent addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d).

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (a) Under section 6072(a), income tax returns of individuals on a calendar year basis must be filed on or before the 15th day of April following the close of the calendar year. Assume an individual filed his income tax return for the calendar year 1969 on July 20, 1970, and the failure to file on or before the prescribed date is not due to reasonable cause. The tax shown on the return is $800 and a deficiency of $200 is subsequently assessed, making the tax required to be shown on the return, $1,000. Of this amount, $300 has been paid by withholding from wages and $400 has been paid as estimated tax. The balance due as shown on the return of $100 ($800 shown as tax on the return less $700 previously paid) is paid on August 21, 1970. The failure to pay on or before the prescribed date is not due to reasonable cause. There will be imposed, in addition to interest, an additional amount under section 6651(a)(2) of $2.50, which is 2.5 percent (2% for the 4 months from April 16 through August 15, and 0.5% for the fractional part of the month from August 16 through August 21) of the net amount due as shown on the return of $100 ($800 shown on the return less $700 paid on or before April 15). There will also be imposed an additional amount under section 6651(a)(1) of $58, determined as follows:

20 percent (5% per month for the 3 months from April 16 through July 15 and 5% for the fractional part of the month from July 16 through July 20) of the net amount due of $300 ($1,000 required to be shown on the return less $700 paid on or before April 15)	$60
Reduced by the amount of the addition imposed under section 6651(a)(2) for those months	2
Addition to tax under section 6651(a)(1)	$50

(b) A notice and demand for the $200 deficiency is issued on January 8, 1971, but the taxpayer does not pay the deficiency until December 23, 1971. In addition to interest there will be imposed an additional amount under section 6651(a)(3) of $10, determined as follows:

Addition computed without regard to limitation:	
6 percent (5½% for the 11 months from January 19, 1971, through December 18, 1971, and 0.5% for the fractional part of the month from December 19 through December 23) of the amount stated in the notice and demand ($200)	$12
Limitation on addition:	
25 percent of the amount stated in the notice and demand ($200)	$50
Reduced by the part of the addition under section 6651(a)(1) for failure to file attributable to the $200 deficiency (20% of $200)	$40
Maximum amount of the addition under section 6651(a)(3)	$10

Example 2. An individual files his income tax return for the calendar year 1969 on December 2, 1970, and such delinquency is not due to reasonable cause. The balance due, as shown on the return, of $500 is paid when the return is filed on December 2, 1970. In addition to interest and the addition for failure to pay under section 6651(a)(2) of $20 (8 months at 0.5% per month, 4%), there will also be imposed an additional amount under section 6651(a)(1) of $112.50, determined as follows:

Penalty at 5 percent for maximum of 5 months, 25 percent of $500	$125.00
Less reduction for the amount of the addition under section 6651(a)(2):	
Amount imposed under section 6651(a)(2) for the months in which there is also an addition for failure to file—2½ percent for the 5 months April 16 through September 15 of the net amount due ($500)	12.50
Addition to tax under section 6651(a)(1)	$112.50

(g) *Treatment of returns prepared by the Secretary*—(1) *In general.* A return prepared by the Secretary under section 6020(b) will be disregarded for purposes of determining the amount of the addition to tax for failure to file any return pursuant to paragraph (a)(1) of this section. However, the return prepared by the Secretary will be treated as a return filed by the taxpayer for purposes of determining the amount of the addition to tax for failure to pay the tax shown on any return and for failure to pay the tax required to be shown on a return that is not so shown pursuant to paragraphs (a)(2) and (3) of this section, respectively.

(2) *Effective date.* This paragraph (g) applies to returns the due date for

which (determined without regard to extensions) is after July 30, 1996.

[T.D. 7133, 36 FR 13594, July 22, 1971, as amended by T.D. 7160, 37 FR 2507, Feb. 2, 1972; T.D. 7260, 38 FR 4259, Feb. 12, 1973; T.D. 8651, 61 FR 262, Jan. 4, 1996; T.D. 8703, 61 FR 69031, Dec. 31, 1996; T.D. 8725, 62 FR 39117, July 22, 1997; T.D. 8895, 65 FR 50408, Aug. 18, 2000; T.D. 9163, 69 FR 70550, Dec. 7, 2004]

§ 301.6652–1 Failure to file certain information returns.

(a) *Returns with respect to payments made in calendar years after 1962*—(1) *Payments of dividends, interest, or patronage dividends aggregating $10 or more.* In the case of each failure to file a statement required by—

(i) Section 6042(a)(1), relating to information returns with respect to payments of dividends aggregating $10 or more in a calendar year, in effect with respect to payments made after December 31, 1962,

(ii) Section 6044(a)(1), relating to information returns with respect to certain payments by cooperatives aggregating $10 or more in a calendar year, in effect with respect to payments made on or after the first day of the first taxable year of the cooperative beginning after December 31, 1962, with respect to patronage occurring on or after such first day, or

(iii) Section 6049(a)(1), relating to information returns with respect to payments of interest aggregating $10 or more in a calendar year, in effect with respect to payments made after December 31, 1962, and the regulations under such section, within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file the statement $10 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures under section 6652(a) and this section during any calendar year shall not exceed $25,000.

(2) *Other payments; statements with respect to tips.* In the case of each failure—

(i) To file a statement of a payment made to another person required under authority of section 6041, relating to information returns with respect to certain information at source, or section 6051(d), relating to information returns with respect to payments of wages as defined in section 3401(a), or section 6050(a), relating to information returns with respect to remuneration of certain crew members defined in section 3121(b)(20), or

(ii) To furnish a statement required under authority of section 6053(b), relating to statements furnished by employers with respect to tips, or section 6050A(b), relating to statements furnished by fishing boat operators with respect to remuneration of certain crew members, within the time prescribed by regulations under those sections for filing such statements (determined with regard to any extension of time for filing),

There shall be paid by the person failing to so file the statement $1 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

(b) *Returns with respect to payments made in calendar years before 1963 and to certain payments by cooperatives after 1962.* In the case of each failure to file a statement, with respect to a payment to another person, required under authority of—

(1) Section 6041, relating to information returns with respect to certain information at source, in effect with respect to payments made before 1963,

(2) Section 6042(1), relating to information returns with respect to payments of corporate dividends, in effect with respect to payments made before 1963,

(3) Section 6044, relating to information returns with respect to payments of patronage dividends, in effect with respect to payments made by a cooperative with respect to patronage occurring before the first day of the first taxable year of the cooperative beginning after December 31, 1962, or

(4) Section 6051(d), relating to information returns with respect to payments of wages as defined in section 3401(a), in effect with respect to payments made before 1963,

and the regulations under such section, within the time prescribed for filing

such statement (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file such statement $1 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

(c) *Returns with respect to reporting payments of wages in the form of group-term life insurance provided in a calendar year after December 31, 1963.* In the case of each failure to file a return required by section 6052(a), relating to reporting payment of wages in the form of group-term life insurance provided for any employee on his life in a calendar year after December 31, 1963, and the regulations under such section, within the time prescribed for filing such return (determined with regard to any extension of time for filing), there shall be paid by the person failing to so file such return $10 for each such return not so filed. However, the total amount imposed on the delinquent person for all such failures under section 6652(a) and this section during any calendar year shall not exceed $25,000.

(d) *Returns with respect to transfer of stock or record title thereto pursuant to options exercised on or after January 1, 1964.* In the case of each failure to file a statement of the transfer of stock or of record title thereto as required by section 6039(a) and the regulations under such section within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the corporation failing to so file such statement, $10 for each such statement not so filed. However, the total amount imposed on the delinquent corporation for all such failures under section 6652(a) and this section during any calendar year shall not exceed $25,000.

(e) *Manner of payment.* The amount imposed under subsection (a), (b), or (c) of section 6652 and this section on any person shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(f) *Showing of reasonable cause.* The amount imposed by subsection (a), (b), or (c) of section 6652 shall not apply with respect to a failure to file a statement within the time prescribed if it is established to the satisfaction of the district director or the director of the Internal Revenue Service Center that such failure was due to reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

(g) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E of the Code.

(h) *Tips.* For regulations under section 6652(c) in respect of failure to report tips, see § 31.6652–1 of this chapter (Employment Tax Regulations).

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7001, 34 FR 1006, Jan. 23, 1969; T.D. 7127, 36 FR 11503, June 15, 1971; T.D. 7716, 45 FR 57124, Aug. 27, 1980]

§ 301.6652–2 Failure by exempt organizations and certain nonexempt organizations to file certain returns or to comply with section 6104(d) for taxable years beginning after December 31, 1969.

(a) *Exempt organization or trust.* In the case of a failure to file a return required by—

(1) Section 6033, relating to returns by exempt organizations, trusts described in section 4947(a)(1) and nonexempt private foundations,

(2) Section 6034, relating to returns by certain trusts, or

(3) Section 6043(b), relating to returns regarding the liquidation, dissolution, termination, or substantial contraction of an exempt organization,

within the time and in the manner prescribed for filing such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid by the exempt organization or trust failing to file such return $10 for each day during which such failure continues. However, the total amount imposed on any exempt organization or trust under this paragraph for such failure with regard to any one return shall not exceed $5,000.

(b) *Managers.* If an exempt organization or trust fails to file under section 6652(d)(1), the Commissioner may, by written demand, request that such organization or trust file the delinquent return within 90 days after the date of mailing of such demand, or within such additional period as the Commissioner shall determine is reasonable under the circumstances. If such organization or trust does not so file on or before the date specified in such demand, there shall be paid by the person or persons responsible for such failure to file $10 for each day after such date during which such failure continues, unless it is shown that such failure is due to reasonable cause. However, the total amount imposed under this paragraph on all persons responsible for such failure with regard to any one return shall not exceed $5,000.

(c) *Public inspection of private foundations' annual returns*—(1) *In general.* In the case of a failure to comply with the requirements of section 6104(d), relating to public inspection of private foundations' annual returns, within the time and in the manner prescribed for complying with section 6104(d), unless it is shown that such failure is due to reasonable cause, there shall be paid by the person or persons responsible for failing to comply with section 6104(d) $10 for each day during which such failure continues. However, the total amount imposed under this subparagraph on all persons responsible for any such failure with regard to any one annual return shall not exceed $5,000.

(2) *Amount imposed.* The amount imposed under section 6652(d)(3) is $10 per day for a failure to comply with section 6104(d). For example, assume that an annual return must be filed by private foundation X on or before May 15, 1982, for the calendar year 1981. The foundation without reasonable cause does not comply with section 6104(d) by publishing notice of the availability of 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 administrator 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 section 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, or 44, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

However, for purposes of paragraph (c)(1)(i) of this section, any amount of additional tax shown on the amended return, so called, filed after the due date of the return is a deficiency.

(2) *Other taxes.* In the case of any tax other than an income, estate, gift or chapter 41, 42, 43, or 44 tax, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

(i) In the case of any tax with respect to which the taxpayer is required to file a return, the sum of (*a*) the amount shown as tax by the taxpayer upon his return filed in respect of such tax, but only if the return is filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, plus (*b*) any amount not shown on a return filed by the taxpayer which is paid in respect of such tax prior to the date prescribed for filing the return. The ''amount shown as tax by the taxpayer upon his return'' for the purposes of this subparagraph shall be determined without regard to any credit for an overpayment for any prior tax return period, and without regard to any adjustment made under section 6205(a), or section 6413(a), relating to special rules applicable to certain employment taxes.

(ii) In the case of any tax payable by stamp, the amount paid (on or before the date prescribed for payment) in respect of such tax.

The amounts specified in subdivisions (i) and (ii) of this subparagraph shall be reduced, for purposes of determining the amount of the underpayment, by the amount of any rebates made. For purposes of this subparagraph, the term ''rebates'' means so much of an abatement, credit, refund, or other repayment as was made on the ground that the tax imposed was less than the excess of the amount specified in subdivision (i) or (ii) of this subparagraph, whichever is applicable, over any rebates previously made.

(d) *No delinquency penalty if fraud assessed.* See paragraph (b)(2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671(b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in

any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(f) *Joint returns.* No person filing a joint return shall be held liable for a fraud penalty except for his own personal fraudulent conduct. Thus, for the fraud penalty to apply to a taxpayer who files a joint return some part of the underpayment in such return must be due to the fraud of such taxpayer. A taxpayer shall not be subject to the fraud penalty solely by reason of the fraud of a spouse and his filing of a joint return with such spouse.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7320, 39 FR 28279, Aug. 6, 1974; 39 FR 29353, Aug. 15, 1974; T.D. 7838, 47 FR 44252, Oct. 7, 1982]

§ 301.6654–1 Failure by individual to pay estimated income tax.

For regulations under section 6654, see §§ 1.6654–1 to 1.6654–5, inclusive, of this chapter (Income Tax Regulations).

[T.D. 7282, 38 FR 19029, July 19, 1973]

§ 301.6655–1 Failure by corporation to pay estimated income tax.

(a) For regulations under section 6655, see §§ 1.6655–1 through 1.6655–7 of this chapter.

(b) *Effective/applicability date:* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44366, Aug. 7, 2007]

§ 301.6656–1 Abatement of penalty.

(a) *Exception for first time depositors of employment taxes*—(1) *Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

(i) The failure is inadvertent;

(ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);

(iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and

(iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a taxpayer is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

[T.D. 8725, 62 FR 39118, July 22, 1997. Redesignated by T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 9507, 75 FR 75904, Dec. 7, 2010]

§ 301.6657–1 Bad checks.

(a) *In general.* Except as provided in paragraph (b) of this section, if a check or money order is tendered in the payment of any amount receivable under the Code, and such check or money order is not paid upon presentment, a penalty of one percent of the amount of the check or money order, in addition to any other penalties provided by law shall be paid by the person who tendered such check or money order. If, however, the amount of the check or money order is less than $500, the penalty shall be $5 or the amount of the check or money order, whichever amount is the lesser. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If payment is refused upon presentment of any check or money order and the person who tendered such check or money order establishes to the satisfaction of the district director that it was tendered in good faith with reasonable cause to believe that it would be duly paid, the penalty set forth in paragraph (a) of this section shall not apply.

§ 301.6658–1 Addition to tax in case of jeopardy.

Upon a finding by the district director that any taxpayer violated, or attempted to violate, section 6851 (relating to termination of taxable year)

there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6659–1 Applicable rules.

(a) *Additions treated as tax.* Except as otherwise provided in the Code, any reference in the Code to ''tax'' shall be deemed also to be a reference to any addition to the tax, additional amount, or penalty imposed by chapter 68 of the Code with respect to such tax. Such additions to the tax, additional amounts, and penalties shall become payable upon notice and demand therefor and shall be assessed, collected, and paid in the same manner as taxes.

(b) *Additions to tax for failure to file return or pay tax.* Any addition under section 6651 or section 6653 to a tax shall be considered a part of such tax for the purpose of the assessment and collection of such tax. For applicability of deficiency procedures to additions to the tax, see paragraph (c) of this section.

(c) *Deficiency procedures*—(1) *Addition to the tax for failure to file tax return.* (i) Subchapter B, chapter 63, of the Code (deficiency procedures) applies to the additions to the income estate, gift, and chapter 41, 42, 43, and 44 taxes imposed by section 6651 for failure to file a tax return to the same extent that it applies to such taxes. Accordingly, if there is a deficiency (as defined in section 6211) in the tax (apart from the addition to the tax) where a return has not been timely filed, deficiency procedures apply to the addition to the tax under section 6651. If there is no deficiency in the tax where a return has not been timely filed, the addition to the tax under section 6651 may be assessed and collected without deficiency procedures.

(ii) The provisions of paragraph (c)(1)(i) of this section may be illustrated by the following examples:

Example 1. A filed his income tax return for the calendar year 1955 on May 15, 1956, not having been granted an extension of time for such filing. His failure to file on time was not due to reasonable cause. The return showed a liability of $1,000 and it was determined that A is liable under section 6651 for an addition to such tax of $50 (5 percent a month for 1 month). The provisions of subchapter B of chapter 63 (deficiency procedures) do not apply to the assessment and collection of the addition to the tax since such provisions are not applicable to the tax with respect to which such addition was asserted, there being no statutory deficiency for purposes of section 6211.

Example 2. Assume the same facts as in example 1 and assume further that a deficiency of $500 in tax and a further $25 addition to the tax under section 6651 is asserted against A for the calendar year 1955. Thus, the total addition to the tax under section 6651 is $75. Since the provisions of subchapter B of chapter 63 are applicable to the $500 deficiency, they likewise apply to the $25 addition to the tax asserted with respect to such deficiency (but not to the $50 addition to the tax under example 1).

(2) *Additions to the tax for negligence or fraud.* Subchapter B of chapter 63 (deficiency procedures) applies to all additions to the income, estate, gift, and chapter 41, 42, 43, and 44 taxes imposed by section 6653 (a) and (b) for negligence and fraud.

(3) *Additions to tax for failure to pay estimated income taxes*—(i) *Return filed by taxpayer.* The addition to the tax for underpayment of estimated income tax imposed by section 6654 (relating to failure by individuals to pay estimated income tax) or section 6655 (relating to failure by corporations to pay estimated income tax) is determined by reference to the tax shown on the return if a return is filed. Therefore, such addition may be assessed and collected without regard to the provisions of subchapter B of chapter 63 (deficiency procedures) if a return is filed since such provisions are not applicable to the assessment of the tax shown on the return. Further, since the additions to the tax imposed by section 6654 or 6655 are determined solely by reference to the amount of tax shown on the return if a return is filed, the assertion of a deficiency with respect to any tax not shown on such return will not make the provisions of subchapter B of chapter 63 (deficiency procedures) apply to the assessment and collection of any additions to the tax under section 6654 or 6655.

(ii) *No return filed by taxpayer.* If the taxpayer has not filed a return and his entire income tax liability is asserted as a deficiency to which the provisions of subchapter B of chapter 63 apply, such provisions likewise will apply to

any addition to such tax imposed by section 6654 or 6655.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7838, 47 FR 44252, Oct. 7, 1982]

ASSESSABLE PENALTIES

§ 301.6671–1 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by subchapter B, chapter 68, of the Code (sections 6671 to 6675, inclusive) shall be paid upon notice and demand by the district director or the director of the regional service center and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Code to ''tax'' imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by subchapter B of chapter 68.

(b) *Person defined.* For purposes of subchapter B of chapter 68, the term ''person'' includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6672–1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable. For further guidance regarding the determination of the proper address for mailing the notice required under section 6672(b)(1), see § 301.6212–2.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 8939, 66 FR 2821, Jan. 12, 2001]

§ 301.6673–1 Damages assessable for instituting proceedings before the Tax Court merely for delay.

Any damages awarded to the United States by the Tax Court under section 6673 against a taxpayer for instituting proceedings before the Tax Court merely for delay shall be assessed at the same time at the deficiency and shall be paid upon notice and demand from the district director or the director of the regional service center and shall be collected as a part of the tax.

§ 301.6674–1 Fraudulent statement or failure to furnish statement to employee.

For regulations under section 6674, see § 31.6674–1 of this chapter (Employment Tax Regulations).

§ 301.6678–1 Failure to furnish statements to payees.

(a) *In general.* In the case of each failure to furnish a statement required—

(1) Under section 6042(c) and § 1.6042–4 to a person with respect to whom a return has been made under section 6042(a)(1), relating to information returns with respect to payment of dividends aggregating $10 or more in a calendar year,

(2) Under section 6044(e) and § 1.6044–5 to a person with respect to whom a return has been made under section 6044(a)(1), relating to information returns with respect to certain payments by cooperatives aggregating $10 or more in a calendar year,

(3) Under section 6049(c) and § 1.6049–3 to a person with respect to whom a return has been made under section 6049(a)(1), relating to information returns with respect to payments of interest aggregating $10 or more in a calendar year,

(4) Under section 6039(b) and § 1.6039–2 to a person with respect to whom a return has been made under section 6039(a), relating to information returns with respect to certain stock option transactions occurring in a calendar year, or

(5) Under section 6052(b) and §1.6052–2 to a person with respect to whom a return has been made under section 6052(a), relating to information returns with respect to payment of wages in the form of group-term life insurance provided for an employee on his life, within the time prescribed for furnishing such statement (determined with regard to any extension of time for furnishing), there shall be paid by the person failing to so furnish the statement $10 for each such statement not so furnished. However, the total amount imposed on the delinquent person for all such failures during a calendar year shall not exceed $25,000.

(b) *Manner of payment.* The penalty imposed under section 6678 and this section on any person shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(c) *Showing of reasonable cause.* The penalty imposed by section 6678 shall not apply with respect to a failure to furnish a statement within the time prescribed if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

§ 301.6679–1 Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 3, 1982.

(a) *Civil penalty*—(1) *In general.* In addition to any criminal penalty provided by law, each U.S. citizen, resident, or person filing a separate or joint information return or on whose behalf a return is filed, pursuant to sections 6035, 6046, or 6046A, and the regulations thereunder, who fails to file such a return within the time provided, or who files a return which does not show the required information, shall pay a penalty of $1,000, unless such failure is shown to be due to reasonable cause.

(2) *Joint return.* The penalty imposed by section 6679 and this section shall apply to each U.S. citizen, resident, or person filing a joint return pursuant to the provisions of section 6035, 6046, or 6046A, which does not show the required information.

(3) *Showing of reasonable cause.* The district director, the director of the Internal Revenue service center, and the director of International Operations are authorized to make the determination that such failure was due to a reasonable cause and that, accordingly, the penalty imposed by section 6679 shall not apply. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause. If the taxpayer exercises ordinary business care and prudence and is nevertheless unable to furnish any item of information required under section 6035, 6046, or 6046A and the regulations thereunder, such failure shall be considered due to a reasonable cause. In determining the extent of a taxpayer's ability to obtain information, the percentage of stock owned by such taxpayer and the nature of the other interests in the foreign corporation will be considered.

(b) *Deficiency procedures not to apply.* The penalty imposed by section 6679 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

[32 FR 15421, Nov. 3, 1967, as amended by T.D. 7288, 38 FR 27215, Oct. 1, 1973; T.D. 7542, 43 FR 18552, May 1, 1978; T.D. 8028, 50 FR 23409, June 4, 1985]

§ 301.6682–1 False information with respect to withholding allowances based on itemized deductions.

For regulations under section 6682, see §31.6682–1 of this chapter (Employment Tax Regulations).

[T.D. 7109, 35 FR 16544, Oct. 23, 1970]

§ 301.6684–1 Assessable penalties with respect to liability for tax under chapter 42.

(a) *In general.* If any person (as defined in section 7701(a)(1)) becomes liable for tax under any section of chapter 42 (other than section 4940 or 4948(a)), relating to private foundations, by reason of any act or failure to act which is

not due to reasonable cause and either—

(1) Such person has theretofore (at any time) been liable for tax under any section of such chapter (other than section 4940 or 4948(a)), or

(2) Such act or failure to act is both willful and flagrant,

then such person shall be liable for a penalty equal to the amount of such tax.

(b) *Showing of reasonable cause.* The penalty imposed by section 6684 shall not apply to any person with respect to a violation of any section of chapter 42 if it is established to the satisfaction of the district director or director of the internal revenue service center that such violation 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 such person that it is made under the penalties of perjury, setting forth all the facts alleged as reasonable cause.

(c) *Willful and flagrant.* For purposes of this section, the term ''willful and flagrant'' has the same meaning as such term possesses in section 507(a)(2)(A) and the regulations thereunder.

(d) *Effective date.* This section shall take effect on January 1, 1970.

[T.D. 7127, 36 FR 11504, June 15, 1971]

§ 301.6685–1 Assessable penalties with respect to private foundations' failure to comply with section 6104(d).

(a) *In general.* In addition to the penalty imposed by section 7207, relating to fraudulent returns, statements, or other documents, any person (as defined in paragraph (b) of this section) who is required to comply with the requirements of section 6104(d), relating to public inspection of private foundations' annual returns, and who fails so to comply, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return with respect to which there is a failure so to comply.

(b) *Person.* For purposes of this section, 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 failure occurs.

(c) *Effective date.* This section shall take effect on January 1, 1970.

(d) *Cross reference.* For the amount imposed for failure to comply with section 6104(d), see paragraph (c) of § 301.6652–2.

[T.D. 7127, 36 FR 11505, June 15, 1971, as amended by T.D. 8026, 50 FR 20758, May 20, 1985]

§ 301.6686–1 Failure of DISC to file returns.

(a) *In general.* In addition to the penalty imposed by section 7203 (relating to willful failure to file a return, supply information, or pay tax) any person who is required to supply informatin or to file a return under section 6011(c) (relating to records and returns of DISC's) and who fails to supply such information of file such return at the time prescribed in sections 6072(b) and 1.6072–2(e) shall pay a penalty of $100 for each failure to supply information (provided that the total amount imposed on the delinquent person for all such failures during a calendar year shall not exceed $25,000) and a penalty of $1,000 with respect to each failure to file a return, unless it is shown that such failure is due to a reasonable cause.

(b) *Showing of reasonable cause.* The penalty imposed by section 6686 shall not apply to any person with respect to a failure to supply information, or to file a return, under section 6011(c) 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, which contains a declaration by such person that the statement is made under the penalties of perjury, and sets forth all the facts alleged as reasonable cause.

[T.D. 7533, 43 FR 6604, Feb. 15, 1978]

§ 301.6688–1 Assessable penalties with respect to information required to be furnished with respect to possessions.

(a) *In general.* Each individual described in section 7654(a) who is subject to an information reporting requirement promulgated under the authority of section 937(c) or 7654 and who fails to

fully satisfy such requirement within the time prescribed for reporting such information must, in addition to any criminal penalty provided by law, pay a penalty of $1000 for each such failure. Information reporting requirements promulgated under the authority of sections 937(c) and 7654(e) include the requirement for an individual to file Form 8898, ''Statement for Individuals who Begin or End Bona Fide Residence in a U.S. Possession,'' under §1.937–1(h) of this chapter, to report that he or she became or ceased to be a bona fide resident of a possession.

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

(c) *Reasonable cause*—(1) The penalty set forth in paragraph (a) of this section will not apply if it is established to the satisfaction of the *Commissioner* that the failure to file the information return or furnish the information within the prescribed time was due to reasonable cause and not to willful neglect. An individual who wishes to avoid the penalty must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the information return on time, or furnish the information on time, in the form of a written statement containing a declaration that it is made under penalties of perjury. This statement must be filed with Internal Revenue Service Center where Form 8898 must be filed. In determining whether there was reasonable cause for failure to furnish the required information, account will be taken of the fact that the individual was unable to furnish the required information in spite of the exercise of ordinary business care and prudence in his effort to furnish the information. An individual will be considered to have exercised ordinary business care and prudence in his effort to furnish the required information if he made reasonable efforts to furnish the information but was unable to do so because of a lack of sufficient facts on which to make a proper determination.

(d) *Effective/applicability date.* This section applies to taxable years ending after April 9, 2008.

[T.D. 9391, 73 FR 19376, Apr. 9, 2008; 73 FR 27728, May 14, 2008]

§ 301.6689–1T Failure to file notice of redetermination of foreign tax (temporary).

(a) *Application of civil penalty.* If a foreign tax redetermination was made with respect to taxes for which the taxpayer previously claimed the foreign tax credit, and the taxpayer failed to notify the Service on or before the date prescribed in regulations under section 905(c) or in regulations under section 404A(g)(2) for giving notice of a foreign tax redetermination, then, unless paragraph (d) of this section applies, there shall be added to the deficiency attributable to such redetermination an amount determined under paragraph (b) of this section. Subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency proceedings) shall not apply with respect to the assessment of the amount of the penalty.

(b) *Amount of penalty.* The amount of the penalty shall be equal to—

(1) Five percent of the deficiency if the failure is for not more than one month, plus

(2) An additional five percent of the deficiency for each month (or fraction thereof) during which the failure continues, but not to exceed in the aggregate twenty-five percent of the deficiency. If the penalty imposed under paragraph (a) of this section applies, then the penalty imposed under section 6653(a), relating to failure to pay by reason of negligent or intentional disregard of rules and regulations, shall not apply.

(c) *Foreign tax redetermination defined.* For purposes of this section, a foreign tax redetermination is any redetermination for which a notice is required under section 905(c) and the regulations thereunder, or section 404A(g)(2) and the regulations thereunder.

(d) *Reasonable cause.* The penalty set forth in this section shall not apply if it is established to the satisfaction of the Service that the failure to file the notification within the prescribed time was due to reasonable cause and not

due to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement that sets forth all the facts alleged as reasonable cause for the failure to file the notification on time and that contains a declaration by the taxpayer that the statement is made under the penalties of perjury. This statement must be filed with the service center in which the notification was required to be filed. The taxpayer must file this statement with the notice required under section 905(c) and the regulations thereunder or section 404A(g)(2) and the regulations thereunder. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the notification within the prescribed time, then the delay will be considered to be due to reasonable cause and not willful neglect.

(e) *Effective/applicability date*—(1) *In general.* This section applies to foreign tax redeterminations (as defined in §1.905–3T(c) of this chapter) occurring in taxable years of United States taxpayers beginning on or after November 7, 2007, and in the three immediately preceding taxable years. For corresponding rules applicable to foreign tax redeterminations occurring in earlier taxable years of United States taxpayers, see 26 CFR 301.6689–1T (as contained in 26 CFR part 301, revised as of April 1, 2007).

(2) *Expiration date.* The applicability of this section expires on or before November 5, 2010.

[T.D. 8210, 53 FR 23618, June 23, 1988, as amended by T.D. 9362, 72 FR 62788, Nov. 7, 2007]

§ 301.6690–1 Penalty for fraudulent statement or failure to furnish statement to plan participant.

(a) *Penalty.* Any plan administrator required by section 6057(e) and §301.6057–1(e) to furnish a statement of deferred vested retirement benefit to a plan participant is subject to a penalty of $50 in each case in which the administrator (1) willfully fails to furnish the statement to the participant in the manner, at the time, and showing the information required by section 6057(e) and §301.6057–1(e), or (2) willfully furnishes a false or fraudulent statement to the participant. The penalty shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act.

(b) *Effective date.* This section shall take effect on September 2, 1974.

[T.D. 7561, 43 FR 38007, Aug. 25, 1978]

§ 301.6692–1 Failure to file actuarial report.

(a) *Penalty.* In each case in which the plan administrator (within the meaning of section 414(g)) of a defined benefit plan to which the minimum funding standards of section 412 apply fails to file the actuarial report described in section 6059 and §301.6059–1 within the time prescribed, the plan administrator shall pay a penalty of $1,000. A failure to provide a material item of information called for in the actuarial report is considered a failure to file the report. For this purpose, the signature of an enrolled actuary (see §301.6059–1(d)) is considered a material item of information.

Further, for any report filed for a plan year ending after January 25, 1982, if the actuary seeks to materially qualify a statement required by §301.6059–1(c) (4) or (5) there is a failure to provide a material item of information called for in the report. For rules relating to statements not considered as materially qualifying the required statements, see §301.6059–1(d).

(b) *Failure to make actuarial valuation.* Section 412(c)(9) and the regulations thereunder prescribe the time for making an actuarial valuation of a defined benefit plan. For purposes of this section, the failure to base information called for in the actuarial report upon an actuarial valuation of the plan which is made within the time prescribed by section 412(c)(9) and the regulations thereunder is considered a failure to file the actuarial report.

(c) *Showing of reasonable cause.* The penalty imposed by this section does not apply if it is established to the satisfaction of the appropriate district director or the director of the Internal Revenue Service Center at which the actuarial report is required to be filed that the failure to file the report was due to reasonable cause. 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.

(d) *Joint liability.* If more than one person is responsible as a plan administrator for a failure to file the actuarial report, all such persons are jointly and severally liable with respect to the failure.

(e) *Manner of payment.* The penalty imposed for the failure to file an actuarial report shall be paid in the same manner as a tax upon the issuance of notice and demand therefor.

(f) *Effective dates.* In the case of a plan in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after December 31, 1975, for which the minimum funding standards of section 412 apply to the plan. In the case of a plan not in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan.

(Secs. 6059 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 947, 68A Stat. 917; 26 U.S.C. 6059, 7805))

[T.D. 7798, 46 FR 57484, Nov. 24, 1981]

§ 301.6693–1 Penalty for failure to provide reports and documents concerning individual retirement accounts or annuities.

(a) *In general*—(1) *Annual reports, etc.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a report or any other document required under section 408(i) and §1.408–5 within the time and in the manner prescribed for furnishing or filing such item shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

(2) *Disclosure statements.* The trustee of an individual retirement account described in section 408(a), or the issuer of an individual retirement annuity described in section 408(b), who fails to furnish or file a disclosure statement, a governing instrument, an amendment to either, or any other document required under section 408(i) and §1.408–6, within the time and in the manner prescribed for furnishing or filing such item, shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

(b) *Showing of reasonable cause.* The penalty imposed by section 6693 shall not apply to any person with respect to a failure to furnish or file a report, statement, or other document within the time and in the manner prescribed if it is established to the satisfaction of the district director 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 such person that it is made under the penalties of perjury and setting forth all the facts alleged to constitute reasonable cause.

(c) *Deficiency procedures not to apply.* The penalty imposed by section 6693 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

(d) *Other penalties.* The penalties of section 6693 and this section are in lieu of any penalty imposed by section 6652(f) for violation of section 6047(d), with respect to any failure to furnish or file described in this section.

(e) *Effective date.* This section shall take effect on January 1, 1975.

[T.D. 7730, 45 FR 72652, Nov. 3, 1980]

§ 301.6707–1 Failure to furnish information regarding reportable transactions.

(a)(1) *In general.* A material advisor who is required to file a return under section 6111(a) of the Internal Revenue Code (Code) with respect to any reportable transaction who fails to file a timely return in accordance with §301.6111–3(e) or who files a return with false or incomplete information with respect to the reportable transaction will be subject to a penalty. A material advisor who fails to file a timely return or who files a false or incomplete return with respect to more than one reportable transaction will be subject to a separate section 6707 penalty for each transaction.

(i) *Reportable transactions.* The amount of the penalty for failing to timely file a return under section 6111(a), or filing the return with false or incomplete information with respect to any reportable transaction other than a listed transaction is $50,000.

(ii) *Listed transactions.* (A) *In general.* The amount of the penalty for failing to timely file a return under section 6111(a), or filing the return with false or incomplete information with respect to a listed transaction is the greater of $200,000 or 50 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

(B) *Intentional action or failure.* If the failure or action subject to the penalty is with respect to a listed transaction and is intentional, the penalty is the greater of $200,000 or 75 percent of the gross income derived by the material advisor with respect to aid, assistance, or advice that is provided with respect to the listed transaction before the date the return is filed under section 6111.

(C) *Transaction that is both a listed transaction and reportable transaction other than a listed transaction.* In the case of a penalty imposed under section 6707 with respect to a transaction that is both a listed transaction and a reportable transaction other than a listed transaction, the penalty under this paragraph (a)(1)(ii), and not the penalty under paragraph (a)(1)(i) of this section, will apply.

(2) *Gross income derived by the material advisor.* For purposes of calculating the amount of the penalty with respect to a listed transaction, the gross income derived by the material advisor will be determined in accordance with §301.6111–3(b)(3)(ii) of this chapter. If a person is a material advisor with regard to more than one type of listed transaction, the gross income derived from each type of listed transaction will be considered separately and will not be aggregated to determine the amount of any section 6707 penalty for failing to make a proper return under section 6111(a). Further, only gross income derived from listed transactions for which the advisor is a material advisor under section 6111 is taken into account for purposes of computing the penalty.

(b) *Definitions*—(1) *Derive.* The term ''derive'' is defined in §301.6111–3(c)(3).

(2) *False information.* For purposes of this section, the term ''false information'' means information provided on a Form 8918, ''Material Advisor Disclosure Statement'' (or successor form), filed with the Internal Revenue Service (IRS) that is untrue or incorrect when the Form 8918 (or successor form) was filed. False information does not include information provided on a Form 8918 (or successor form) filed with the IRS that is immaterial or that is untrue or incorrect due to a mistake or accident after the exercise of reasonable care.

(3) *Incomplete information.* For purposes of this section, the term ''incomplete information'' means a Form 8918 (or successor form) filed with the IRS that does not provide the information required under §301.6111–3(d). A Form 8918 (or successor form) filed with the IRS will not be considered incomplete when the information not provided on the form is immaterial or was not provided due to mistake or accident after the exercise of reasonable care. Whether information is immaterial will be determined based upon the facts and circumstances surrounding each failure to file or filing of an incomplete return. A material advisor who completes the form to the best of the material advisor's ability and knowledge after the exercise of reasonable effort to obtain the information will not be considered to have filed incomplete information within the meaning of this section. A Form 8918 (or successor form) will be considered to provide incomplete information when it omits information required to be provided under §301.6111–3(d) or contains a statement that the omitted information will be provided upon request.

(4) *Intentional.* For purposes of this section, the failure to timely file a return or the submission of a return with false or incomplete information is intentional if—

(i) The material advisor knew of the obligation to file a return and knowingly did not timely file a return with the IRS; or

(ii) The material advisor filed a return knowing that it was false or incomplete.

(5) *Listed transaction.* The term ''listed transaction'' is defined in section 6707A(c)(2) of the Code and § 1.6011–4(b)(2) of this chapter.

(6) *Material Advisor.* The term ''material advisor'' is defined in section 6111(b)(1) of the Code and § 301.6111–3(b).

(7) *Reportable transaction.* The term ''reportable transaction'' is defined in section 6707A(c)(1) of the Code and § 1.6011–4(b)(1) of this chapter.

(c) *Assessment of penalty*—(1) *Intentional failure determined based on all the facts and circumstances.* Whether a material advisor intentionally failed to timely file a return or intentionally filed a false or incomplete return will be determined based upon all the facts and circumstances surrounding the non-filing or filing of a false and/or incomplete return. The higher penalty under the flush language of section 6707(b)(2) will not apply to any material advisor whose failure to timely file or whose furnishing of false or incomplete information was unintentional. The failure to timely file a return, or filing a return with false or incomplete information, will be considered unintentional if the material advisor subsequently files a true and complete return prior to the earlier of the date that any taxpayer files a Form 8886, ''Reportable Transaction Disclosure Statement'' (or successor form) identifying the material advisor with respect to the reportable transaction in question, or the date the IRS contacts the material advisor concerning the reportable transaction.

(2) *Individual liability in the case of more than one material advisor.* If there is more than one material advisor who is responsible for filing a return under section 6111 with respect to the same reportable transaction, a separate penalty under section 6707 may be assessed against each material advisor who fails to timely file or files a return with false or incomplete information. The determination of whether the failure or action subject to the penalty is intentional will be made individually for each material advisor.

(3) *Designation agreements.* A material advisor who is required to file a return under section 6111 and who is a party to a designation agreement within the meaning of § 301.6111–3(f) is subject to a penalty under section 6707 if the designated material advisor fails to file a return timely or files a return with false or incomplete information. In the case of a listed transaction, if the designated material advisor fails to file a return timely, or files a return with false or incomplete information, the nondesignated material advisor who is a party to the designation agreement will not be treated as intentionally failing to file the return, or intentionally filing a return with false or incomplete information, unless the nondesignated material advisor knew or should have known that the designated material advisor would fail to file a true and complete return timely.

(d) *Examples.* The rules of paragraphs (a) through (c) of this section are illustrated by the following examples:

Example 1. Advisor A becomes a material advisor as defined under section 6111(b)(1) and § 301.6111–3(b) in the fourth quarter of 2014 with respect to a reportable transaction other than a listed transaction, and Advisor B also becomes a material advisor in the same quarter with respect to the same reportable transaction. Advisors A and B fail to timely file the Form 8918 with respect to the reportable transaction. Under paragraph (a)(1)(ii) of this section, the penalty for failure by a material advisor to timely disclose a reportable transaction other than a listed transaction is $50,000. Because the section 6707 penalty applies to each material advisor independently under paragraph (c)(2) of this section, Advisors A and B each are subject to a section 6707 penalty of $50,000.

Example 2. Same as *Example 1*, except that Advisor B timely files the Form 8918. Advisors A and B did not enter into a designation agreement. Accordingly, paragraph (c)(3) of this section does not apply and only Advisor A is subject to a $50,000 section 6707 penalty.

Example 3. Advisor C becomes a material advisor to Client X on January 5, 2015, with respect to a listed transaction. Advisor C derives $400,000 in gross income from his advice to Client X because he expects to receive that amount from Client X, even though he has not yet received that amount. On January 5, 2016, Advisor C becomes a material advisor to Client Y with respect to the same type of listed transaction. Advisor C derives $100,000 in gross income from his advice to Client Y because he expects to receive that amount from Client Y, even though he has not yet received that amount. At no time did Advisor C file a Form 8918 to disclose the

listed transaction. For purposes of this example, assume that Advisor C's failure to file a Form 8918 was unintentional. Therefore, under paragraph (c)(2) of this section, Advisor C is subject to a section 6707 penalty based on the gross income derived from Client X and Client Y. Accordingly, Advisor C is subject to a penalty of $250,000 (50 percent of $500,000, the gross income derived from Clients X and Y).

Example 4. Same as *Example 3,* except that the gross income Advisor C expects to receive from his advice to Client Y (a C corporation) is $20,000. Because the material advisor fee threshold is not satisfied with respect to Client Y, Advisor C is not a material advisor to Client Y with respect to the listed transaction. Advisor C is, however, a material advisor with respect to Client X with respect to the same listed transaction. Therefore, Advisor C is subject to a section 6707 penalty with respect to the failure to timely file a Form 8918 disclosing the listed transaction. Although Advisor C provided advice with respect to two transactions that are the same type of listed transaction, Advisor C was only a material advisor with respect to advice provided to Client X. Therefore, under paragraph (c)(2) of this section Advisor C is subject to a section 6707 penalty based only on the gross income derived from Client X. Accordingly, Advisor C is subject to a penalty of $200,000 (50 percent of $400,000, the gross income derived from Client X).

Example 5. Same as *Example 3,* except that Advisor C files a Form 8918 disclosing the listed transaction on November 16, 2015. Because Advisor C becomes a material advisor to Client X on January 5, 2015, the Form 8918 is required to be filed on or before April 30, 2015 (the last day of the month that follows the end of the calendar quarter in which the advisor became a material advisor with regard to the reportable transaction). See § 301.6111–3(e). Therefore, Advisor C did not timely file the Form 8918. Advisor C is subject to a $200,000 penalty under section 6707 for his unintentional failure because, as of the date he filed the Form 8918, the gross income Advisor C had received or expected to receive with respect to advice relating to a listed transaction that was not disclosed only included $400,000 of gross income for advice to Client X. By the time that Advisor C provides advice to Client Y on January 5, 2016, Advisor C has disclosed the listed transaction.

Example 6. Same as *Example 3,* except that Advisor C files the Form 8918 on February 16, 2016, disclosing the listed transaction. Because Advisor C first becomes a material advisor with respect to the listed transaction on January 5, 2015, the Form 8918 is required to be filed on or before April 30, 2015 regardless of the fact that Advisor C is also a material advisor to a second client, Client Y, with respect to the same listed transaction. This is because under the facts of *Example 3,* Advisor C ''becomes'' a material advisor on January 5, 2015. The date on which a material advisor ''becomes'' a material advisor is determinative of the due date for the Form 8918 under § 301.6111–3(e). Therefore, when Advisor C files the Form 8918 on February 16, 2016, the form is not timely filed under section 6111. Under paragraph (c)(2) of this section, Advisor C is subject to a penalty under section 6707 of $250,000 (50 percent of $500,000) because, as of the date that the Form 8918 was filed, the gross income that Advisor C received or expected to receive as a material advisor with respect to a listed transaction that was not disclosed included gross income for advice to both Client X ($400,000) and Client Y ($100,000).

Example 7. Advisor D becomes a material advisor as defined under section 6111(b)(1) and § 301.6111–3(b) in the first quarter of 2016 with respect to a reportable transaction other than a listed transaction. Advisor D does not file a Form 8918 by April 30, 2016. The transaction is then identified as a listed transaction in published guidance on July 7, 2016. Advisor D knew that he had a new obligation to file a Form 8918 by October 31, 2016, and intentionally fails to file the Form 8918. Advisor D is subject to only one penalty, in the amount of the greater of $200,000, or 75 percent of the gross income he derived from the transaction, for intentionally failing to disclose the listed transaction in accordance with § 301.6111–3(d)(1) and (e).

Example 8. Same as *Example 7,* except that Advisor D filed a Form 8918 disclosing the listed transaction on October 15, 2016. As a result of that disclosure, Advisor D is not subject to the section 6707 penalty amount described in § 301.6707–1(a)(1)(ii). However, because Advisor D did not timely file a Form 8918 by April 30, 2016, the due date for the Form 8918 with respect to the reportable transaction for which Advisor D became a material advisor in the first quarter of 2016, Advisor D is subject to a section 6707 penalty of $50,000 as described in § 301.6707–1(a)(1)(i). The disclosure of the listed transaction does not correct Advisor D's initial failure to disclose the reportable transaction by April 30, 2016.

(e) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707 penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction; and

(ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures

for a material advisor to request rescission of a section 6707 penalty by guidance published in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list, and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The material advisor, upon becoming aware of the failure to disclose a reportable transaction in accordance with section 6111 and the regulations thereunder, filed a complete and proper, albeit untimely, Form 8918 (or successor form). This factor weighs in favor of rescission if circumstances suggest that the material advisor did not delay in filing an untimely but properly completed Form 8918 (or successor form) until after the IRS had taken steps to identify the person as a material advisor with respect to the reportable transaction. For instance, this factor will weigh strongly in favor of rescission if the material advisor files the Form 8918 (or successor form) prior to the date the IRS contacts the material advisor concerning the reportable transaction. However, this factor will not weigh in favor of rescission if the facts and circumstances indicate that the material advisor delayed filing the Form 8918 (or successor form) until after a taxpayer files a Form 8886 (or successor form) identifying the material advisor with respect to the reportable transaction in question.

(ii) The material advisor's failure to disclose the reportable transaction properly was due to an unintentional mistake of fact that existed despite the material advisor's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The material advisor has an established history of properly disclosing other reportable transactions and complying with other tax laws, including compliance with any requests made by the IRS under section 6112, if applicable.

(iv) The material advisor demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6111 arose from events beyond the material advisor's control.

(v) The material advisor cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a material advisor cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the material advisor meets the deadlines described in guidance published in the Internal Revenue Bulletin for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the material advisor demonstrates that there was reasonable cause for, and the material advisor acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6111. An important factor in determining reasonable cause and good faith is the extent of the material advisor's efforts to determine whether there was a requirement to file the return required under section 6111. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (e)(3) of this section weighs against granting rescission. The presence or absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission; rather the determination will be made in consideration of all of the factors and any other facts and circumstances.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's

delegate) will not consider doubt as to collectability of, or liability for, the penalties (except that the Commissioner (or the Commissioner's delegate) may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).

(f) *Effective/applicability date.* The rules of this section apply to returns the due date for which is after July 31, 2014.

[T.D. 9686, 79 FR 44283, July 31, 2014]

§ 301.6707A–1 Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

(a) *In general.* Any person who fails to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction may be subject to a monetary penalty. Subject to maximum and minimum limits, the penalty for failure to include information with respect to any reportable transaction is 75 percent of the decrease in tax shown on the return as a result of the transaction or the decrease that would have resulted from the transaction if it were respected for Federal tax purposes. The penalty for failure to include information with respect to a listed transaction shall not exceed $100,000 for a natural person and $200,000 for all other persons. The penalty for failure to include information with respect to any other reportable transaction shall not exceed $10,000 for a natural person and $50,000 for all other persons. The penalty with respect to any reportable transaction shall not be less than $5,000 for a natural person and $10,000 for all other persons. The section 6707A penalty is in addition to any other penalty that may be imposed.

(b) *Definitions*—(1) *Reportable transaction.* The term ''reportable transaction'' is defined in section 6707A(c)(1) of the Code and §1.6011–4(b)(1) of this chapter.

(2) *Listed transaction.* The term ''listed transaction'' is defined in section 6707A(c)(2) of the Code and §1.6011–4(b)(2) of this chapter.

(c) *Assessment of the penalty*—(1) *In general.* The Internal Revenue Service may assess a penalty under section 6707A with respect to each failure to disclose a reportable transaction within the time and in the form and manner provided by §§1.6011–4(d) and 1.6011–4(e) of this chapter or pursuant to the time, form, and manner stated in other published guidance. Section 1.6011–4(e) provides, in part, that a taxpayer must attach a disclosure statement to the taxpayer's return for each taxable year for which the taxpayer participates in a reportable transaction. A taxpayer also must attach a disclosure statement to each amended return that reflects the taxpayer's participation in a reportable transaction and, if a reportable transaction results in a loss that is carried back to a prior year, a taxpayer must attach a disclosure statement to the taxpayer's application for tentative refund or amended return for that prior year. In addition, a copy of the disclosure statement must be sent to the IRS Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. Nonetheless, a taxpayer who is required to disclose a transaction by filing Form 8886, ''Reportable Transaction Disclosure Statement,'' (or successor form) with a return (including an amended return or application for tentative refund) and who is also required to disclose the transaction by filing that form with OTSA, is subject to only a single section 6707A penalty for failure to make either one or both of those disclosures. If section 6011 and the regulations thereunder require a disclosure statement to be filed at the time that a return is filed, the disclosure statement is considered to be timely filed if it is filed at the same time as the return, even if the return is filed untimely after its due date (including extensions).

(2) *Examples.* The rules of paragraph (c)(1) of this section are illustrated by the following examples:

Example 1. Taxpayer T is required to attach a Form 8886 to its return for the 2008 taxable year and to send a copy of the Form 8886 to OTSA at the time it files its return. Taxpayer T fails to attach the Form 8886 to its

return and fails to send a copy of the Form 8886 to OTSA. Taxpayer T is subject to a single penalty under section 6707A for failure to disclose because Taxpayer T failed to comply with the disclosure requirements of section 6011 as described in §§1.6011–4(d) and 1.6011–4(e) of this chapter. A penalty under section 6707A also would apply if Taxpayer T had failed to comply with only one of the two requirements.

Example 2. Same as *Example 1*, except that Taxpayer T also subsequently files an amended return for 2008 that reflects Taxpayer T's participation in the reportable transaction described in *Example 1*. Taxpayer T fails to attach a Form 8886 to the amended return as required by §1.6011–4(e)(1) of this chapter. Taxpayer T is subject to an additional penalty under section 6707A for failing to disclose a reportable transaction on the amended return for 2008.

Example 3. In November 2009, Taxpayer U participates in a reportable transaction resulting in a loss. On March 15, 2010, Taxpayer U files its 2009 return, on which it reports the loss and to which it fails to attach a Form 8886. One month later, Taxpayer U files an amended return for 2008, on which it carries back the loss and to which it fails to attach a Form 8886. Section 1.6011–4(e)(1) of this chapter requires Taxpayer U to attach a Form 8886 to its amended return for the 2008 taxable year. Taxpayer U is subject to two penalties under section 6707A: one for the failure to attach Form 8886 to its amended return for 2008 and another for the failure to attach Form 8886 to its 2009 return.

Example 4. Taxpayer V participates in a nonlisted reportable transaction and is required to attach a Form 8886 to its return for the 2009 taxable year that is due on March 15, 2010. Taxpayer V timely files its return but fails to attach the Form 8886 to its return. After the due date of Taxpayer V's return and without an extension of time to file, Taxpayer V files an amended return relating to the 2009 taxable year to which Taxpayer V attaches the Form 8886. Taxpayer V is subject to a penalty under section 6707A for failure to disclose because Taxpayer V failed to comply with the disclosure requirements of section 6011 (described in §1.6011–4(e)(1) of this chapter) by not attaching a Form 8886 to its original return for the 2009 taxable year that was timely filed on or before the due date of March 15, 2010. An additional penalty under section 6707A would apply if Taxpayer V had failed to attach a Form 8886 to its amended return.

Example 5. Shareholder W, a shareholder in an S Corporation, receives a timely Schedule K–1, ''Shareholder's Share of Income, Deductions, Credits, *etc.*,'' on April 10, 2009, and determines that she is required to attach a Form 8886 to her individual income tax return for the 2008 taxable year. Shareholder W fails to attach the Form 8886 to her 2008 individual income tax return but files a proper and complete Form 8886 with OTSA on June 12, 2009. Section 1.6011–4(e)(1) of this chapter provides that if a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K–1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K–1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). Accordingly, Shareholder W is not subject to a penalty under section 6707A for failure to disclose.

Example 6. In July 2008, Taxpayer X participates in Transaction Z, a transaction that is not reportable as of April 15, 2009, the date Taxpayer X files his individual income tax return for 2008. On July 15, 2009, Transaction Z is identified as a transaction of interest. Section 1.6011–4(e)(2)(i) of this chapter provides that if a transaction that is not otherwise a reportable transaction becomes a listed transaction or a transaction of interest after the taxpayer has filed a tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or transaction of interest, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest. Taxpayer X fails to file a Form 8886 with OTSA by October 13, 2009, 90 calendar days after the date that the transaction was identified as a transaction of interest. Accordingly, Taxpayer X is subject to a penalty under section 6707A.

Example 7. Taxpayer Y is required to attach a Form 8886 to its return for the 2008 taxable year with respect to participation in a listed transaction. Taxpayer Y attaches the Form 8886 to its timely filed return. The Form 8886, however, does not describe all of the potential tax benefits expected to result from this transaction and states that information will be provided upon request. Because the Form 8886 does not describe all of the potential tax benefits expected to result from the transaction and merely provides that the information will be provided upon request, the Form 8886 filed by Taxpayer Y is

incomplete and does not satisfy the requirements set forth in §1.6011–4(d) of this chapter. Taxpayer Y is subject to a penalty under section 6707A for failure to disclose in the appropriate manner.

(d) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707A penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction; and

(ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a taxpayer to request rescission of a section 6707A penalty with respect to a reportable transaction other than a listed transaction by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Internal Revenue Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The taxpayer, upon becoming aware that it failed, in whole or in part, to disclose a reportable transaction in accordance with the requirements of §1.6011–4 of this chapter, filed a complete and proper, albeit untimely, Form 8886 (or successor form), as required by §1.6011–4. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with a return (including an amended return or application for tentative refund), in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file an amended return with the appropriate Service Center and attach a complete and proper Form 8886 (or successor form) to that amended return. The amended return filed with the untimely Form 8886 (or successor form) must not reflect any other changes to the return (including an amended return or application for tentative refund) that it amends, and the taxpayer must, in the space provided for an explanation of changes on the amended return, state the reason for filing the amended return. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with OTSA, in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file a complete and proper Form 8886 (or successor form) with OTSA. If the taxpayer fails to file a complete and proper Form 8886 (or successor form) with the return (including an amended return or application for tentative refund) and also fails to file a copy of the complete and proper Form 8886 (or successor form) with OTSA, incurring one penalty for both failures, then the taxpayer must, in the manner prescribed in this paragraph (d)(3)(i), file complete and proper Forms 8886 with both the Service Center and OTSA in order for the untimely disclosures to weigh in favor of rescission. This factor will weigh heavily in favor of rescission provided that—

(A) The taxpayer files the Form 8886 prior to the date the IRS first contacts the taxpayer (including contacts by the IRS with any partnership in which the taxpayer is a partner, any S corporation in which the taxpayer is a shareholder, or any trust in which the taxpayer is a beneficiary) concerning a tax examination for the tax period in which the taxpayer participated in the reportable transaction; and

(B) Other circumstances suggest that the taxpayer did not delay filing an untimely but properly completed Form 8886 until after the IRS had taken steps to identify the taxpayer's participation in the reportable transaction in question.

(ii) The failure, in whole or in part, to disclose in accordance with the requirements of §1.6011–4 of this chapter was due to an unintentional mistake of fact that existed despite the taxpayer's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The taxpayer has an established history of properly disclosing other reportable transactions and complying with other tax laws.

(iv) The taxpayer demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6011 arose from events beyond the taxpayer's control.

(v) The taxpayer cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a taxpayer cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the taxpayer meets the deadlines described in Rev. Proc. 2007–21 (2007–1 CB 613) (or successor document) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the taxpayer demonstrates that there was reasonable cause for, and the taxpayer acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6011. An important factor in determining reasonable cause and good faith is the extent of the taxpayer's efforts to ensure that persons who prepared the taxpayer's return were informed of the taxpayer's participation in the reportable transactions; this factor will be disregarded, however, if the persons who prepared the taxpayer's return were material advisors with respect to the reportable transaction. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (d)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider collectability of, or doubt as to liability for, the penalties (except that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).

(6) *Example.* The following example illustrates the rules of paragraph (d)(3) of this section:

Example. In 2008, Taxpayer Z participated in a nonlisted reportable transaction for the first time. Under § 1.6011–4(e)(1) of this chapter, he was required to attach a complete and proper Form 8886 to his 2008 return, due on April 15, 2009, and to file a copy of the Form 8886 with OTSA. Taxpayer Z timely filed his 2008 return but failed to attach a Form 8886 to his return or file a Form 8886 with OTSA. On June 1, 2009, Taxpayer Z discovered his error. On June 8, 2009, Taxpayer Z filed an amended return for tax year 2008 and attached a complete and proper Form 8886 that disclosed his participation in the reportable transaction. The amended return reflected no changes from the original return and explained that the sole purpose of the amended return was to correct Taxpayer Z's failure to file a Form 8886 with his original return. On June 8, 2009, Taxpayer Z also filed a copy of the complete and proper Form 8886 with OTSA. The IRS later notified Taxpayer Z that he was subject to a penalty under section 6707A because he failed to comply with the disclosure requirements of section 6011 by not attaching Form 8886 to his return for the 2008 taxable year. The IRS properly assessed the penalty under section 6707A and, on October 15, 2010, issued notice and demand. On November 1, 2010, in accordance with Rev. Proc. 2007–21, Taxpayer Z submitted a written request for rescission of the assessed penalty. The fact that Taxpayer Z filed an untimely Form 8886 shortly after discovery of his error but before the IRS first contacted him concerning his return for the 2008 taxable year will weigh heavily in favor of rescission.

(e) *Reports to the Securities and Exchange Commission (SEC)*—(1) *In general.* Under section 6707A(e), a taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to be consolidated with another person for purposes of these reports) must disclose in certain reports, as provided in revenue procedures or other guidance published pursuant to

paragraph (e)(2) of this section, the requirement to pay each of the following penalties:

(i) The penalty imposed by section 6707A(a) for failure to disclose a listed transaction.

(ii) The accuracy-related penalty imposed by section 6662A(a) at the 30- percent rate determined under section 6662A(c) for a reportable transaction understatement with respect to which the relevant facts affecting the tax treatment of the reportable transaction were not adequately disclosed in accordance with regulations prescribed under section 6011.

(iii) The accuracy-related penalty imposed by section 6662(a) at the 40-percent rate determined under section 6662(h) for a gross valuation misstatement, if the taxpayer (but for the exclusionary rule of section 6662A(e)(2)(C)(ii)) would have been subject to the accuracy-related penalty under section 6662A(a) at the 30-percent rate determined under section 6662A(c).

(iv) The penalty described in paragraph (e)(3) of this section for failure to disclose in periodic reports filed with the SEC the requirement to pay any of the penalties described in paragraphs (e)(1)(i) through (e)(1)(iii) or paragraph (e)(3) of this section.

(2) *Manner and content of disclosure.* The Secretary may, by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin, prescribe the manner in which the disclosure under paragraph (e)(1) of this section must be made, including identification of the specific SEC form and section thereof in which the taxpayer must make the disclosure as well as specification of the timing and contents of the disclosure.

(3) *Penalty for failure to disclose in SEC filings.* Any taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to file consolidated reports with another person) may be subject to a penalty under section 6707A(b) for each failure to disclose the requirement to pay a penalty identified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The taxpayer also may be subject to an additional penalty under section 6707A(b) for each failure to disclose a penalty arising under this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The penalty provided by this paragraph (e)(3) will be rescinded if the IRS rescinds in full the penalty for failing to disclose under section 6011 the reportable transaction underlying the penalty provided by this section. Otherwise, the penalty provided by this paragraph (e)(3) is not subject to rescission.

(f) *Effective/applicability date.* (1) The rules of this section apply to disclosure statements that are due after September 11, 2008.

(2) The penalty calculations set forth in paragraph (a) of this section apply to penalties assessed after December 31, 2006.

[T.D. 9550, 76 FR 55258, Sept. 7, 2011]

§ 301.6708–1 Failure to maintain lists of advisees with respect to reportable transactions.

(a) *In general.* Any person who is required to maintain a list under section 6112 who, upon written request for the list, fails to make the list available to the Secretary within 20 business days after the date of the request shall be subject to a penalty in the amount of $10,000 for each subsequent calendar day on which the person fails to furnish a list containing the information and in the form required by section 6112 and its corresponding regulations. The penalty will not be imposed on any particular day or days for which the person establishes that the failure to comply on that day is due to reasonable cause.

(b) *Calculation of the 20-business-day period.* The 20-business-day period shall begin on the first business day after the earliest of the date that the IRS—

(1) Mails a request for the list required to be maintained under section 6112(a) by certified or registered mail to the person required to maintain the list;

(2) Hand delivers the written request to the person required to maintain the list; or

(3) Leaves the written request with an individual 18 years old or older at

the usual place of business of the person required to maintain the list.

(c) *Making a list available.* (1) A person who is required to maintain a list required by section 6112 may make the list available by mailing or delivering it to the IRS within 20 business days after the date of the list request. Section 7502 and the regulations thereunder shall apply to this section.

(2) A person who is required to maintain a list required by section 6112 may also make the list available to the IRS by making it available for inspection and copying during normal business hours, as provided by section 6112, or by another agreed-upon method, on an agreed-upon date that falls within the 20-business-day period following the list request.

(3) *Extension*—(i) *In general.* Upon a showing of good cause by the person prior to the expiration of the 20-business-day period following a list request, the IRS may, in its discretion, agree to extend the period within which to make all or part of the list available. For purposes of this paragraph, ''good cause'' is shown if the person establishes that the 20-business-day deadline cannot reasonably be met despite diligent efforts by the person to maintain the materials constituting a list and to make that list available to the IRS in the time and manner required by the Secretary under section 6112.

(ii) *Requesting an extension.* Any request for an extension of the 20-business-day period must be made in writing to the person at the IRS who requested the list. The person requesting an extension must briefly describe the information and documents that comprise the list as required by section 6112; explain the circumstances that would warrant additional time; propose a schedule to complete the production of the list; state that to the best of the person's knowledge, as of the date of the list request, all information and records relating to the list under the person's possession, custody, or control had been maintained in accordance with procedures and policies that are consistent with sections 6001 and 6112 of the Internal Revenue Code; and state that the extension request is not being made to avoid the person's list maintenance obligations imposed by section 6112 and its corresponding regulations. The IRS may, in its discretion, grant the person's extension request in full or in part. The IRS will consider whether granting an extension may impair its ability to make a timely assessment against any of the participants in the transaction associated with the requested list. The IRS will not grant an extension if it determines that a significant reason for the extension request is to delay producing the list. A pending extension request by itself does not constitute reasonable cause for purposes of section 6708.

(4) *Examples.* The following examples illustrate paragraph (c)(3)(i) and (ii) of this section. These examples are intended to illustrate how the facts and circumstances in paragraph (c)(3)(i) and (ii) of this section may apply; in any given case, however, all of the facts and circumstances must be analyzed.

Example 1. (i) Firm A is a large law firm that is a material advisor. Firm A conducts annual sessions to educate its professionals about reportable transactions and the firm's obligations related to those reportable transactions. Firm A instructs its professionals to provide information on tax engagements that involve reportable transactions and to provide the documents required to be maintained under sections 6001 and 6112 to Firm A's compliance officer for list maintenance purposes. Firm A's policy provides that, for each engagement involving a reportable transaction, one firm professional will send an email to the firm's compliance officer about the engagement and then direct a subordinate to send the documents required to be maintained to the firm's compliance officer. Firm A has policies and procedures in place to monitor compliance with these rules and to address non-compliance.

(ii) Firm A receives a request from the IRS for a section 6112 list. In compiling its list to turn over to the IRS during the 20-business-day period following the list request, Firm A discovers that, with respect to one reportable transaction, a subordinate did not provide the documentation required by Firm A's policy. In addition, Firm A experiences difficulty locating the required documents as both the professional and the subordinate who worked on the matter are no longer employed by Firm A, requiring the firm to undertake an extensive search for the information responsive to the list request. Firm A also seeks the information from the firm's clients. Despite these efforts, Firm A reasonably determined that it will not be able to

respond timely to the request. Within the 20-business-day period, Firm A notifies the IRS, in writing, of the difficulties it is experiencing and requests an additional 10 business days to locate and produce the information for this one transaction. Within the 20-business-day period, Firm A makes all other required list information available to the IRS, together with a description of the information that is being searched for, all statements required by these regulations, and a proposed schedule to produce the missing information.

(iii) Under these circumstances, Firm A demonstrated that it could not reasonably make the portion of the list relating to the one transaction available within the 20-business-day period and thus qualified for an extension. Firm A had established policies and procedures reasonably designed and implemented to ensure and monitor compliance with the requirements of section 6112 and address non-compliance. Because the facts and circumstances indicate that Firm A made diligent efforts to maintain the materials constituting the list in a readily accessible form and as otherwise required under section 6112, the requested 10-business-day extension with respect to the portion of the list relating to the one transaction where records were not maintained in accordance with the firm's policies and procedures should be granted.

Example 2. (i) Assume the same facts set forth in example one, except that, in the process of compiling the list to comply with the list maintenance request, Firm A first becomes aware that a firm professional did not send an email to the firm's compliance officer about a transaction subject to the list maintenance request and did not direct a subordinate to send to the firm's compliance officer the information required to be maintained with respect to the transaction. Assume further that Firm A had a robust section 6112 compliance monitoring program in place and despite this, the firm did not know that the professional did not follow firm policies and procedures with respect to this transaction. The professional who worked on the matter is no longer employed by Firm A, causing Firm A difficulty in locating the required information and in ascertaining whether the professional in question failed to comply with Firm A's list maintenance policies with respect to any other reportable transactions. Firm A is searching its records to locate information responsive to the list request and to ensure that no other reportable transactions were omitted from the list. Firm A estimates that it will take an additional 20 business days after the 20th business day to retrieve the missing information and provide IRS with the additional information responsive to the list request. Within the 20-business-day period, Firm A notifies the IRS, in writing, of the difficulties it is experiencing and requests an additional 20 business days to locate and produce the information for this one transaction and for any other reportable transactions omitted from the list as a result of the inaction by the professional in question. Within the 20-business-day period, Firm A makes all other required list information available to the IRS, together with a description of the information that is being searched for, all statements required by these regulations, and a proposed schedule to produce the missing documents.

(ii) Under these facts and circumstances, Firm A demonstrated that it could not reasonably, within the 20-business-day period, make available the portion of the list relating to one or possibly more transactions omitted from the list because of the inaction of the professional in question. Firm A therefore qualifies for an extension. Firm A had established policies and procedures reasonably designed and implemented to ensure and monitor compliance with the requirements of section 6112 and address non-compliance. Because the facts and circumstances indicate that Firm A made diligent efforts to maintain the materials constituting the list in a readily accessible form and as otherwise required under section 6112, the requested 20-business-day extension with respect to the portion of the list relating to the one known omitted transaction and to any other omitted reportable transactions resulting from the inaction of the professional in question should be granted.

(d) *Failure to make list available.* A failure to make the list available includes any failure to furnish the requested list to the IRS in a timely manner and in the form required under section 6112 and its corresponding regulations. Examples of failures to make a list available include instances in which a person fails to furnish any list; furnishes an incomplete list; or furnishes a list, whether or not complete, after the time required by this section.

(e) *Computation of penalty*—(1) *In general.* The penalty imposed by section 6708 accrues daily, beginning on the first calendar day after the expiration of the 20-business-day period following a written list request, and continues for each calendar day thereafter until the person's failure to furnish a list in the form required by section 6112 and its corresponding regulations ends. If the list is delivered or mailed to the IRS outside of the 20-business-day period, the penalty shall not apply on the day the list is delivered to the IRS or,

if the list is mailed, the day the list is received by the IRS.

(2) *Computation of penalty after grant of extension.* If the IRS grants an extension of the 20-business-day period pursuant to paragraph (c)(3) of this section, the penalty imposed by section 6708 accrues daily, beginning on the first calendar day after the extension period expires, and continues for each calendar day thereafter until the person's failure to furnish a list in the form required by section 6112 and its corresponding regulations ends. If the list is delivered or mailed to the IRS outside of the period of extension, the penalty shall not apply on the day the list is delivered to the IRS or, if the list is mailed, the day the list is received by the IRS.

(3) *Designation agreements and concurrent application of penalty.* If material advisors with respect to the same reportable transaction enter into a designation agreement pursuant to section 6112(b)(2) and §301.6112–1(f), separate penalties will be imposed on designated material advisors and nondesignated material advisors who are parties to the designation agreement for their respective periods of failure or noncompliance with a list request. A penalty will continue to accrue against a material advisor who is a party to a designation agreement until such time when a list complying with the requirements of section 6112 and its corresponding regulations is furnished by that material advisor or any other material advisor who is a party to the designation agreement.

(4) *Example.* The following example illustrates paragraph (e) of this section.

Example. The IRS hand delivers a written request for the list required to be maintained under section 6112 to Firm B, a material advisor, on Friday, March 10, 2017. Firm B must make the list available to the IRS on or before Friday, April 7, 2017, the 20th business day after the request was hand delivered. If Firm B fails to make the list available to the IRS by that day, absent reasonable cause or the IRS's grant of an extension of the response time, the $10,000-per-day penalty begins on Saturday, April 8, 2017. The $10,000 per day penalty will continue for each subsequent calendar day until Firm B makes the complete list available, except for those days for which Firm B demonstrates reasonable cause. If Firm B hand delivers a complete copy of the requested list to the IRS on the morning of Tuesday, April 11, 2017, absent reasonable cause or the IRS's prior grant of an extension for the response time, a penalty of $30,000 will be imposed upon Firm B (for April 8, 9, and 10). See paragraphs (g) and (h) of this section for an explanation of reasonable cause.

(f) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Material advisor* means a person described in section 6111 and §301.6111–3(b).

(2) *Business day* means every calendar day other than a Saturday, Sunday, or legal holiday within the meaning of section 7503.

(3) *Reportable transaction* means a transaction described in section 6707A(c)(1) and section 1.6011–4(b)(1).

(4) *Listed transaction* means a transaction described in section 6707A(c)(2) and §1.6011–4(b)(2) of this chapter.

(g) *Reasonable cause—general applicability*—(1) *Overview.* The section 6708 penalty will not be imposed for any day or days for which the person shows that the failure to make a complete list available to the IRS was due to reasonable cause. The determination of whether a person had reasonable cause is made on a case-by-case and day-by-day basis, taking into account all the relevant facts and circumstances. Facts and circumstances relevant to a material advisor's reasonable cause for failing to make available the list on a specific day include facts and circumstances arising after the request for the list. The person's showing of reasonable cause should relate to each specific day or days for which the person failed to make available the requested list. Factors establishing reasonable cause include, but are not limited to, factors identified in paragraphs (g) and (h) of this section.

(2) *Good-faith factors.* The most important factors to establish reasonable cause are those that reflect the extent of the person's good-faith efforts to comply with section 6112. The following factors, which are not exclusive, will be considered in determining whether a person has made a good-faith effort to comply with the section 6112 requirements:

(i) The person's efforts to determine or assess its status as a material advisor as defined by section 6111;

(ii) The person's efforts to determine the information and documentation required to be maintained under section 6112;

(iii) The person's efforts to meet its obligations to maintain a readily producible list as required by section 6112;

(iv) The person's efforts, upon receiving the list request, to make the list available to the IRS within the 20-business-day period (or extended period) under paragraphs (a), (b), and (c)(3) of this section; and

(v) The person's efforts to ensure that the list furnished to the IRS is accurate and complete.

(3) *Ordinary business care.* The exercise of ordinary business care may constitute reasonable cause. To show ordinary business care, the person may, for example, show that the person established, and adhered to, procedures reasonably designed and implemented to ensure compliance with the section 6112 requirements. In all instances when ordinary business care is claimed as constituting reasonable cause, a person must show that the person took immediate steps, upon discovering any failure relating to the list, to correct the failure. A person's failure to take immediate steps to correct a failure related to the list upon discovering the failure is a factor weighing against a conclusion that the person exercised ordinary business care. Notwithstanding the occurrence of an isolated and inadvertent failure, a person still may be able to demonstrate that the person exercised ordinary business care, considering all the relevant facts and circumstances, but only if the person had established and adhered to procedures reasonably designed and implemented to ensure compliance with the section 6112 requirements.

(4) *Supervening events.* A person may establish reasonable cause for one or more days for which, considering all the relevant facts and circumstances, the failure to timely furnish the list required by section 6112 was due solely to a supervening event beyond the person's control. Events beyond a person's control may include fire, flood, storm, or other casualty; illness; theft; or other similarly unexpected event that damages or impairs the person's relevant business records or system for processing and providing these records, or that affects the person's ability to maintain the section 6112 list or make it available to the IRS. Reasonable cause may be established only for the period that a person who exercised ordinary business care would need to provide the list from alternative records in existence, or make the list available, under the specific facts and circumstances.

(5) *Reliance on opinion or advice*—(i) *In general.* A person may rely on an independent tax professional's advice to establish reasonable cause. The reliance, however, must be reasonable and in good faith, in light of all the other facts and circumstances. For a person to be considered to have relied on the advice, the advice must have been received by the person before the date the list is required to be made available to the IRS. If the person received advice from an independent tax professional, the person's reliance on that advice will be considered reasonable only if the independent tax professional reasonably believed that it is more likely than not that the person does not have an obligation imposed by section 6112. For example, this advice may conclude that the person is not a material advisor; that the transaction upon which the person provided material aid, assistance, or advice is not a reportable transaction for which a list was required to be maintained as of the date of the advice; that the information and documents to be produced constitute the required list; or that the information or documents withheld by the person are not required to be produced. The advice must also take into account and consider all relevant facts and circumstances, not rely on unreasonable legal or factual assumptions, not rely on or take into account the possibility that a list request may not be made, and not rely on unreasonable representations or statements of the person seeking the advice. Advice from a tax professional who is not independent may be considered in determining reasonable cause if, in light of and in relation to all the other facts and circumstances, taking into account such advice is reasonable. However, by itself, advice from a tax professional who is not independent is not sufficient

to establish reasonable cause. Independent tax professional advice is not required to establish reasonable cause and the failure to obtain advice from an independent tax professional does not preclude a finding of reasonable cause if, based on the totality of all of the relevant facts and circumstances, reasonable cause has been established.

(ii) *Independent tax professional.* For purposes of this section, an independent tax professional is a person who is knowledgeable in the relevant aspects of Federal tax law and who is not a material advisor with respect to the specific transaction that is the subject of the list request. For advice related to a listed transaction, a person who is a material advisor with respect to any transaction that is the same as or substantially similar to the type of transaction that is the subject of the list request will not be considered an independent tax professional.

(6) *Examples.* The following examples illustrate this paragraph (g). These examples are intended to illustrate how the facts and circumstances in paragraphs (g)(2) through (g)(5) of this section may apply; in any given case, however, all of the facts and circumstances must be analyzed.

Example 1. On August 11, 2017, the IRS sends a list request via certified mail to Firm C, a material advisor. Firm C consists of a sole practitioner, X, who is away from the office on vacation on this date. X has arranged for a colleague, Y, to review Firm C's mail, email, and telephone messages daily during his absence. X returns to the office the day after his vacation ends, on September 5, 2017, and immediately contacts the IRS to notify it of his absence. Firm C makes a complete list available to the IRS on September 19, 2017, 10 business days after he has returned from vacation. Firm C establishes that X was on vacation at the time the list request was sent to Firm C, and Firm C promptly furnished the requested list in a manner and time period reflecting ordinary business care and prudence upon X's return to the office. Under these circumstances, Firm C is considered to have made a good-faith effort to comply with the section 6112 requirements. Firm C has established reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date the list was made available to the IRS. See paragraphs (g)(2) and (3) of this section.

Example 2. On March 3, 2017, the IRS hand delivers to Firm D, a material advisor, a list request related to a transaction believed by the IRS to have been implemented in November 2008 by a group of Firm D's clients (the advisees). Firm D's involvement in the transaction included implementing the transaction on behalf of some but not all of the advisees. Firm D timely makes the requested list available to the IRS. Upon review, the IRS determines that the information furnished by Firm D appears to be accurate, but the IRS believes that some of the information is incomplete because it does not contain information about certain individuals who were identified through other investigative means as Firm D's clients who may have engaged in the transaction. In response to a follow-up inquiry by the IRS, Firm D establishes, however, that it is not a material advisor with respect to these taxpayers. Under these circumstances, Firm D has furnished the list as required by section 6112. Because the list was complete when furnished, Firm D need not make a showing of reasonable cause. See paragraph (g)(1) of this section.

Example 3. The IRS sends a list request by certified mail to Firm E, a material advisor. Firm E maintains the materials responsive to the list request on a portable data storage device. Under Firm E's established procedures for maintaining section 6112 lists, once the transaction is completed, paper documents are scanned and saved electronically according to Firm E's records management procedures. Under Firm E's records management procedures, after the scanning process is completed, Firm E sends the paper documents to an off-site storage facility. Three days before the 20th business day following the date of the written request, the electronic data is permanently destroyed. Firm E contacts the IRS representative listed as a contact person on the section 6112 list request to advise him that the relevant data was permanently destroyed. Firm E establishes that it exercised ordinary business care but that the data was nevertheless destroyed due to circumstances outside of its control. Under these circumstances, Firm E has reasonable cause for the period of time that Firm E cannot respond to the list request due to circumstances out of Firm E's control. The reasonable cause exception, however, will only be available to Firm E for the period of time that a person who exercises ordinary business care would need to obtain the materials that are part of the list, including in this case paper documents from the off-site storage facility, and furnish the list to the IRS. See paragraphs (g)(3) and (4) of section.

Example 4. On February 2, 2017, the IRS hand delivers a list request to Firm F, a material advisor. Firm F filed with the IRS the disclosure statement required by section 6111 for the reportable transaction that is the

subject of the list request but did not maintain the section 6112 list documentation in a readily accessible format after filing the section 6111 statement. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm F, Firm F contacts the IRS to ask for additional time to comply with the list request, stating that it could not gather the list information together in 20 business days. Because Firm F is not able to show that it made diligent efforts to maintain the materials constituting the list in a readily accessible form, the IRS should not grant Firm F an extension of time. See paragraph (c)(3) of this section. Further, Firm F does not have reasonable cause because it has failed to demonstrate a good-faith effort to comply with the section 6112 requirements and ordinary business care. See paragraphs (g)(2) and (3) of this section.

Example 5. On August 11, 2017, the IRS sends a list request, via certified mail, to Firm G, a material advisor. Firm G consists of a sole practitioner, P. Firm G maintains the materials responsive to the list request electronically. Generally, under Firm G's records management procedures, once a transaction is completed, the documents related to that transaction are scanned and then saved electronically consistent with IRS guidance on maintaining books and records in electronic form. P is aware of the list request but ignores it. On September 24, 2017, the 13th calendar day after the 20-business-day period following the list request (due to the Labor Day holiday), P suffers a temporary but debilitating illness that lasts 22 days. Following the illness, P immediately returns to work. After returning to work, P continues to ignore the list request. In this situation, the facts and circumstances indicate that Firm G does not have reasonable cause for any day in which there was a failure to make the list available to the IRS, including the 22 days due to the intervening event, because the failure was not due solely to the supervening event occurring on September 24, 2017. Firm G did not make a good-faith effort to make the list available to the IRS before or after the supervening event occurred. Firm G is liable for the $10,000 per day penalty from the first day following the expiration of the 20-business-day period until but not including the day that Firm G furnishes the list to the IRS. See paragraphs (g)(2) and (4) of this section.

Example 6. On August 11, 2017, the IRS sends a list request, via certified mail, to Firm H, a material advisor. Firm H, consists of a sole practitioner, P. Firm H maintains the materials responsive to the list request electronically. Generally, under Firm H's records management procedures, once the transaction is completed, the documents are scanned and then saved electronically consistent with IRS guidance on maintaining books and records in electronic form. P is aware of the list request and begins compiling the documents to respond to the IRS within the 20-business-day period ending on September 11, 2017 (due to the Labor Day holiday). Before responding to the list request, P suffers a temporary but debilitating illness on September 3, 2017, that lasts through September 19, 2017. Upon returning to work on September 20, 2017, P contacts the IRS to explain that P experienced a temporary but debilitating illness from September 3, 2017, through September 19, 2017, and that P has returned to the office and intends to furnish the list to the IRS within a short period of time. Firm H furnishes the list to the IRS on September 22, 2017. In this situation, the facts and circumstances indicate that Firm H has reasonable cause for the period from September 12, 2017 until September 21, 2017, attributable to P's illness. The failure to furnish the list in a timely fashion was solely attributable to the supervening event occurring on September 3, 2017, and Firm H promptly furnished the requested list in a manner and time period reflecting ordinary business care upon P's return to the office. Firm H is considered to have made a good-faith effort to comply with the section 6112 requirements. Firm H has established reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date Firm H furnished the list to the IRS. See paragraphs (g)(2) and (4) of this section.

Example 7. Firm I receives a list request for transactions that are the same or substantially similar to the listed transaction described in Notice 2002–21, 2002–1 CB 730. Firm I will be considered a material advisor with respect to a particular transaction for which it provided advice if the transaction is the same as or substantially similar to the transaction described in Notice 2002–21. Firm I, however, is unsure whether the transaction is the same as or substantially similar to the transaction described in this Notice. Firm I obtains an opinion from Firm L, a law firm, on this issue. P, a partner in Firm L, provided tax advice to clients who invested in other Notice 2002–21 transactions, including how to report the purported tax benefits from the transaction on their income tax returns, and Firm L is a material advisor with respect to those transactions. Because Firm L is a material advisor with respect to the type of transaction that is the same as or substantially similar to the transaction described in Notice 2002–21, Firm L is not considered an independent tax professional under paragraph (g)(5)(ii) of this section. Therefore, Firm I cannot rely on advice provided by Firm L to establish reasonable cause under this paragraph (g). The IRS may consider Firm L's advice in determining reasonable cause in light of other facts and

circumstances, but Firm L's advice, without more, is not sufficient to establish reasonable cause because P is not an independent tax professional under paragraph (g)(5)(ii) of this section.

Example 8. Firm J, a law firm, provides advice to various clients of the firm regarding the potential tax benefits of a reportable transaction under §1.6011–4(b)(5) of this chapter (involving a section 165 loss) and is a material advisor with respect to that transaction. Firm J also provides advice to Firm M, an accounting firm, regarding the same transaction. Firm M then advises various Firm M clients regarding this same transaction, and is a material advisor. The transaction is not a listed transaction. Firm N, a law firm that is not associated with Firm J and has not provided advice with respect to the same transaction to Firm M, has provided advice to its own clients regarding other transactions subject to §1.6011–4(b)(5) of this chapter, but not the particular transaction that was the subject of Firm J's advice to Firm M. The IRS hand delivers a list request to Firm M, the subject of which is the transaction regarding which Firm J provided advice to Firm M. Before the expiration of the 20-business-day period, Firm M seeks advice from Firm J and Firm N about the propriety of withholding certain documents related to the transaction. Because Firm J provided advice with respect to the particular transaction that is the subject of the list request, Firm J is not an independent tax professional under paragraph (g)(5)(ii) of this section. Although Firm N has provided advice on a transaction that is considered a reportable transaction under §1.6011–4(b)(5) of this chapter, Firm N is considered to be an independent tax professional under paragraph (g)(5)(ii) of this section because Firm N did not provide material assistance with respect to the particular transaction that is the subject of the list request.

(h) *Reasonable cause—special considerations*—(1) *Material advisor no longer in existence.* If a material advisor has dissolved, been liquidated, or otherwise is no longer in existence, the person required by section 6112 to maintain the list (the ''responsible person'') is subject to the penalty for failing to make the list available. In considering whether a responsible person or successor in interest has reasonable cause for any failure to timely make the list available to the IRS, the IRS will consider all of the facts and circumstances, including those facts and circumstances relating to the dissolution, liquidation, and winding up of the original material advisor's business and any efforts the original material advisor made to comply with the section 6112 requirements before the dissolution or liquidation. When appropriate or applicable, due diligence, if any, performed by a responsible person or successor in interest will be considered, and due consideration will be given for acts taken by that person to minimize the potential for violating the section 6112 requirements.

(2) *Review by IRS.* Whether reasonable cause exists for a period of time will be determined based on all the relevant facts and circumstances, including facts and circumstances arising after the request for the list. If a material advisor establishes that, in its efforts to comply with the provisions of section 6112 and its corresponding regulations, it acted in good faith, as defined in paragraph (g)(2) of this section, the material advisor will be deemed to have reasonable cause for the periods of time the IRS takes to review a furnished list for compliance with the section 6112 requirements and to inform the material advisor of any identified failures in the list. If the material advisor does not establish that it acted in good faith the IRS will not consider the time it takes to review the list or inform the material advisor of identified failures as a factor in determining whether the material advisor has reasonable cause for that period.

(3) *Examples.* The following examples illustrate paragraph (h)(2) of this section.

Example 1. On February 2, 2017, the IRS hand delivers a list request to Firm O, a material advisor. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm O, Firm O sends a list to the IRS that was contemporaneously prepared after Firm O issued advice with respect to the reportable transaction and continuously maintained in accordance with the requirements of section 6112 and the related regulations. Before sending the list, a supervisor at Firm O carefully reviewed the list to verify that it was comprehensive and accurate. The IRS completes its review on March 23, 2017, and determines that the list is not complete because Firm O furnished a draft copy of the tax opinion, rather than the final document, which Firm O had mistakenly misfiled. After Firm O is notified of the missing information, Firm O immediately furnishes a complete copy of the final version of the tax opinion. Firm O made a good-faith effort to

comply with the section 6112 requirements, including its efforts to ensure that the list that was furnished to the IRS was accurate and complete. Firm O has reasonable cause for the entire period between the expiration of the 20-business-day period following the list request and the date it furnished the complete list to the IRS.

Example 2. On February 2, 2017, the IRS hand delivers a list request to Firm P, a material advisor. Firm P's involvement in the reportable transaction included implementing the transaction on behalf of some but not all of Firm P's clients. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm P, Firm P sends the list to the IRS. The IRS completes its review on March 23, 2017. The IRS believes the client list is incomplete because it does not contain information about certain individuals who were identified through other investigative means as clients of Firm P who may have engaged in the transaction. On March 27, 2017, in response to a follow-up inquiry by the IRS, Firm P establishes that it is not a material advisor with respect to these taxpayers. Therefore, the March 3, 2017 list was complete and accurate when first furnished. Under these circumstances, Firm P has timely furnished the list as required by section 6112. Because Firm P complied with the requirements of section 6112 no penalty applies, and Firm P does not need to establish reasonable cause for the period from March 4, 2017, through March 27, 2017, when the IRS was reviewing the list.

Example 3. On February 2, 2017, the IRS hand delivers a list request to Firm Q, a material advisor. On March 3, 2017, the 20th business day (due to the Presidents' Day holiday) after the list request is delivered to Firm Q, Firm Q sends the list to the IRS. Firm Q had not maintained a list contemporaneously after issuing the advice with respect to the reportable transaction, and created the list during the 20 business days before providing the list to the IRS. To meet the 20-business-day deadline, a supervisor did not review the final list before sending it to the IRS. The IRS completes its review on March 23, 2017, and determines that the list is not complete because it does not include 15 persons for whom Firm Q acted as a material advisor with respect to the reportable transaction. Firm Q furnishes the additional information on March 27, 2017. Because Firm Q is not able to show that it made diligent efforts to maintain the materials constituting the list in a readily accessible form and that it made a reasonable effort to ensure that the list that was furnished to the IRS was accurate and complete, Firm Q cannot establish that it exhibited a good-faith effort to comply with the section 6112 requirements. Firm Q does not have reasonable cause for its failure to furnish the complete list from March 4, 2017, through March 26, 2017.

Example 4. Within the 20-business-day period following a list request, Firm R sends four boxes of documents comprising the required list to the IRS using a commercial delivery service. The IRS receives only three of the boxes because box 4 was erroneously self-addressed using Firm R's office address. Box 4 arrives at Firm R's office on January 6, 2017, the 2nd calendar day after the 20th business day after the list request was made. Firm R immediately recognizes its clerical error, promptly contacts the IRS, and resends the original and unopened box 4, properly addressed, to the IRS together with documentation supporting the error. The IRS receives box 4 on January 9, 2017. Under these circumstances, Firm R has reasonable cause for the late delivery of box 4 because it made a good-faith attempt to timely comply with the list request and immediately corrected an inadvertent error upon its discovery. As a result, no penalty will be imposed based on the delay in providing box 4. If, after inspection, the IRS determines that, even with the contents of box 4, the list is incomplete or defective, Firm R must establish reasonable cause for the incomplete nature of the list or the defect to avoid imposition of a penalty for the period beginning January 5, 2017, until but not including the day that Firm R furnishes the list to the IRS.

Example 5. (i) Firm S is a large law firm that is a material advisor. Firm S conducts annual sessions to educate its professionals about reportable transactions and the firm's obligations related to those reportable transactions. Firm S instructs its professionals to provide information on tax engagements that involve reportable transactions and to provide the documents required to be maintained under section 6112 to Firm S's compliance officer for list maintenance purposes. Firm S's policy provides that, for each engagement involving a reportable transaction, one firm professional will send an email to the firm's compliance officer about the engagement and then direct a subordinate to send to the firm's compliance officer the documents required to be maintained.

(ii) Firm S receives a request from the IRS for a section 6112 list. In compiling its list to turn over to the IRS during the 20-business-day period, Firm S asks all professionals to ensure that they have reported all engagements involving a reportable transaction to the firm's compliance officer. Before submission to the IRS, a Firm S supervisor reviews the list to ensure completeness. Firm S has no reason to know of any deficiencies, and in compiling its list, Firm S discovers no deficiencies.

(iii) Upon review of the list, the IRS determines that the information furnished by Firm S appears to be accurate, but the IRS

believes that some of the information is incomplete because it does not contain information about an individual who may have engaged in the transaction and who was identified through other investigative means as Firm S's client. In response to a follow-up inquiry by the IRS, Firm S immediately reviews its files and discovers that a former Firm S professional, who is no longer employed by Firm S, provided material advice to the individual with respect to carrying out a reportable transaction, but did not send an email to the firm's compliance officer about the transaction or direct a subordinate to send the documents required to be maintained to the firm's compliance officer. Firm S immediately furnishes the missing information and documents related to the identified omission to the IRS.

(iv) Firm S establishes that the professional in question ordinarily complied with Firm S's list maintenance procedures and that Firm S had no reason to know of this one omission or to suspect that the professional had failed to report any reportable transactions to the firm's compliance officer in accordance with the firm's policies. Firm S also immediately undertakes a thorough search of its electronic and paper files to locate any additional reportable transactions relating to the professional in question that may have been omitted from the list. Under these circumstances, Firm S has demonstrated that it has acted in good faith in its efforts to comply with section 6112 and is deemed to have reasonable cause for the period of time the IRS took to review the furnished list and to inform the material advisor of the identified failure in the list. See paragraph (h)(2) of this section. The reasonable cause exception, however, will only be available to Firm S with respect to the omission identified by the IRS for the period of time that a person who exercises ordinary business care would need to obtain the information and documents related to the identified omission. See paragraph (g)(3) of this section. With respect to any other omissions related to the same professional and not identified by the IRS, the reasonable cause exception will only be available to Firm S for the period of time that a person who exercises ordinary business care would need to ascertain whether any other reportable transactions were omitted from the list and to obtain the information and documents related to any such omissions. See paragraph (g)(3) of this section.

(i) *Effective/applicability date.* This section applies to all requests for lists required to be maintained under section 6112, including lists that persons were required to maintain under section 6112(a) as in effect before October 22, 2004, made on or after April 28, 2016.

[T.D. 9764, 81 FR 25334, Apr. 28, 2016]

§ 301.6708–1T Failure to maintain list of investors in potentially abusive tax shelters (temporary).

The following questions and answers issued under section 6708 of the Internal Revenue Code of 1954, as added by section 142 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 683), relate to the penalty for failure to maintain a list of investors in potentially abusive tax shelters.

Q-1: What penalties are provided with respect to the failure properly to maintain a list of persons who acquire interests in potentially abusive tax shelters?

A-1: Any organizer (as defined in A-5 of § 301.6112–1T) of a tax shelter (as defined in A-3 of § 301.6112–1T) or seller (as defined in A-6 of § 301.6112–1T) of interests in a tax shelter who fails to meet any requirement imposed by section 6112 regarding the requirement to maintain a list of persons who have acquired interests in a tax shelter shall pay a penalty of $50 for each investor with respect to whom there is such a failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. For example, if an organizer who is required to maintain a list identifying each of 100 persons who acquired interests in a tax shelter fails to maintain the list, the organizer will be liable for a penalty of $5,000 ($50 × 100 persons), unless the organizer can show the failure was due to reasonable cause and not due to willful neglect. As another example, if a seller is required to maintain a list identifying each of 100 persons who acquired interests in a tax shelter from the seller and fails properly to maintain such list by omitting the TIN of each person, the seller will be liable for a penalty of $5,000 ($50 × 100 persons), unless the seller can show the failure was due to reasonable cause and not due to willful neglect.

Q-2: If an organizer or seller properly maintains a list, but fails to make the list available to the Internal Revenue Service upon request, will the organizer or seller be subject to a penalty?

A-2: Yes. A penalty applies if an organizer or seller fails to meet any requirement imposed by section 6112, including the requirement, upon request, to make the list available to the Internal Revenue Service as soon as practicable, but in any event within 10 calendar days. (See A-21 of §301.6112–1T). The amount of the penalty is $50 for each person required to be on the list at the time of the request by the Internal Revenue Service. Assume, for example, that an organizer of a tax shelter properly maintains a list of 200 persons who have acquired interests in a tax shelter and that the Internal Revenue Service requests the organizer to provide the list. If the organizer fails to provide the list to the Internal Revenue Service as soon as practicable (as required by A-21 of §301.6112–1T), or in a form that enables the Internal Revenue Service to obtain the required information without undue delay or difficulty (as required by A-16 of §301.6112–1T), the organizer will be liable for a penalty of $10,000 ($50 × 200 persons), unless the organizer can show that the failure to provide the list was due to reasonable cause and not to willful neglect.

Q-3: If an organizer or seller is required to maintain lists for more than one tax shelter in which the same person has acquired interests, how does the penalty apply if the organizer or seller fails to identify the person on each of the lists?

A-3: A separate $50 penalty applies with respect to the list for each tax shelter on which the person who acquired interests is not identified.

Q-4: Is there a limitation on the amount of the penalty imposed on a seller or organizer required to maintain a list of persons who have acquired interests in a tax shelter?

A-4: Yes. The maximum penalty that may be imposed on a person for any calendar year may not exceed $50,000.

Q-5: How does the calendar year limitation apply?

A-5: A separate $50,000 limitation applies to each calendar year in which a failure occurs, and to each tax shelter for which a list is required to be maintained. See A-6 of this section for special rules for determining how the $50,000 limitation applies to a designated person who fails properly to maintain a list of investors.

Example 1. Assume that A, an organizer of a tax shelter, fails to maintain and to provide to the Internal Revenue Service a list of 900 persons who acquired interests in the tax shelter in 1986. In addition, assume that A again fails to maintain and to provide the list of 900 investors upon request in 1987. A is subject to a penalty of $45,000 (900 persons × $50) for each calendar year in which there is a failure to comply with the requirements of section 6112. Thus, A is subject to $45,000 in penalties for the failures to maintain and to provide the list in 1986, and $45,000 in penalties for the failures to maintain and to provide the list in 1987, unless A can show reasonable cause for the failures.

Example 2. Assume that B, an organizer of Tax Shelter I, fails to provide a list of 1,500 persons who acquired interests in the tax shelter to the Internal Revenue Service upon request in 1987. Assume also that B, an organizer of Tax Shelter II, fails to provide a list of 2,000 persons who acquired interests in Tax Shelter II to the Internal Revenue Service upon request in 1987. Because the $50,000 calendar year limitation applies separately with respect to each tax shelter for which a list must be maintained, B is subject to a penalty of $50,000 for failing to provide the list for Tax Shelter I in 1987 and a $50,000 penalty for failing to provide the list for Tax Shelter II in 1987.

Q-6: How does the penalty apply to a designated person?

A-6: Separate penalties, each with its own $50,000 calendar year limitation, apply with respect to the portion of the list kept by the designated person in that person's capacity as organizer and to each portion of the list kept by the designated person in that person's capacity as the designated person with respect to each organizer and seller who signed the agreement under A-12 of §301.6112–1T and for whom the designated person is responsible for complying with the requirements of section 6112.

Example. Assume that X, an organizer and seller, sells interests in a tax shelter directly to 750 investors in 1985. In addition, assume that A, an agent of X, negotiates for X sales of interests in the tax shelter to an additional 500 persons in 1985. If no agreement to designate X is made pursuant to A-11 of §301.6112–1T, X would be required to maintain a list of the 1,250 investors who acquired interests in the tax shelter (see paragraph (a) of A-8 of §301.6112–1T) and A would be required to maintain a list of the 500 persons who acquired interests through A (see A-10 of

§ 301.6112–1T). If, therefore, neither X nor A complied with the requirements of section 6112 in 1985, X would be liable for $50,000 in penalties ($50 × 1,250 investors, subject to the $50,000 maximum) and A would be liable for $25,000 in penalties $50 × 500 investors). Assume, however, that X and A enter into a written agreement to designate X to maintain the list for the tax shelter. Pursuant to that agreement, A submits to X all of the required information regarding the sales to the 500 persons otherwise required to be maintained on A's list and provides the notice required by A-13 of § 301.6112–1T to each person. In 1986, X fails to provide any list of investors to the Internal Revenue Service upon request. For calendar year 1986, X is liable for penalties of $50,000 in X's capacity as an organizer ($50 × 1,250 persons, subject to the $50,000 maximum). In addition, X, as the person designated to maintain the list for A, is 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.

[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 either a failure to file timely an information return or a failure to include correct information on an information return. For example, an error on a magnetic media submission to the Internal Revenue Service that prevents processing by the Internal Revenue Service may constitute a failure to file timely. However, if information is set forth on the wrong field of the magnetic media submission, such an error may constitute a failure to file timely or a failure to include correct information, depending upon the extent of the failure.

(b) *Reduction in the penalty when a correction is made within specified periods*—(1) *Correction within 30 days.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $15 in lieu of $50 if the failure is corrected on or before the 30th day after the required filing date (''within 30 days''). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed $75,000.

(2) *Correction after 30 days but on or before August 1.* The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be $30 in lieu of $50 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs (''after 30 days but on or before August 1''). (See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on February 28 or March 15.) The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed $150,000.

(3) *Required filing date defined.* The term ''required filing date'' means the date prescribed for filing an information return with the Internal Revenue Service (or the Social Security Administration in the case of Forms W-2) determined with regard to any extension of time for filing.

(4) *Penalty amount for return with multiple failures.* If a return is subject to a penalty for more than one failure, and the penalty amounts for the failures differ, the higher penalty amount will be imposed.

(5) *Examples.* The provisions of paragraphs (a) and (b) (1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the *de minimis* exception under paragraph (d) of this section, the lower small business limitations under paragraph (e) of this section, the penalty for intentional disregard under paragraph (f) of this section, or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. Corporation R fails to file timely 11,000 Forms 1099–MISC (relating to miscellaneous income) for the 1990 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 6,000 after 30 days but on or before August 1, 1991. For the same year R fails to file timely 400 Forms 1099–INT (relating to payments of interest) which R eventually files on September 28, 1991, after the period for reduction of the penalty has elapsed. R is subject to a penalty of $20,000 for the 400 forms which were not filed by August 1 ($50 × 400 = $20,000), $150,000 for the 6,000 forms filed after 30 days ($30 × 6,000 = $180,000, limited to $150,000 under paragraph (b)(2) of this section), and $75,000 for the 5,000 forms filed within 30 days ($15 × 5,000 = $75,000), for a total penalty of $245,000.

Example 2. Corporation T fails to file timely 6,000 Forms 1099–MISC for the 1990 calendar year. T files the 6000 Forms 1099–MISC

on September 1, 1991. Because T does not correct the failure by August 1, 1991, T is subject to a penalty of $250,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a), T would be subject to a $300,000 penalty ($50 × 6,000 = $300,000).

Example 3. Corporation U files timely 300 Forms 1099–MISC on paper for the 1990 calendar year with correct information. Under section 6011(e)(2) a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 1991. It is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of $2,500 for 50 returns ($50 × 50 = $2,500).

Example 4. Corporation V files 300 Forms 1099–MISC on paper for the 1990 calendar year. The forms were filed on March 15, 1991, rather than on the required filing date of February 28, 1991. Under section 6011(e)(2), a person required to file at least 250 returns during a calendar year must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 1991. V is subject to a penalty of $3,750 for filing 250 of the returns late ($15 × 250) and $2,500 for failing to file 50 returns on magnetic media ($50 × 50) for a total penalty of $6,250.

(6) *Application to returns not due on February 28, or March 15.* For returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more), the penalty is $15 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is $50 rather than $30. There is no period during which the penalty is reduced to $30 under paragraph (b)(2) of this section.

(c) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term ''inconsequential error or omission'' means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (g)(5) of this section for the definition of ''payee.''

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential—

(i) A taxpayer identification number;

(ii) A surname of a payee (*i.e.,* the person required to be furnished a copy of the information set forth on an information return); and

(iii) Any monetary amounts. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. A filer files a Form 1099–MISC (relating to miscellaneous income) with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the word ''street'' is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's first name, William, is misspelled as ''Willaim.'' the error does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. See paragraph (c)(2) of this section. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 3. A filer files a Form 1099–MISC with the Internal Revenue Service. The Form 1099–MISC is complete and correct except that the payee's name, ''John Doe,'' is misspelled as ''John Ode.'' Under paragraph (c)(2) of this section, supplying an incorrect surname for a payee is never considered an inconsequential error. Therefore, a penalty

is imposed under paragraph (a) of this section.

(d) *Exception for a de minimis number of failures*—(1) *Requirements.* The penalty under paragraph (a) of this section is not imposed for a *de minimis* number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. (See paragraph (d)(4) of this section for special rules relating to returns that are not due on February 28 or March 15.)

(2) *Calculation of the de minimis exception.* The number of returns to which the *de minimis* exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the *de minimis* exception applies, the *de minimis* exception applies to those returns that will afford the filer the greatest reduction in penalty. The *de minimis* exception applies to failures to include correct information that exist after the application (if any) of the waiver for reasonable cause under section 6724(a) and § 301.6724–1. Returns to which the *de minimis* exception applies are treated as having been originally filed with correct information.

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of paragraph (f) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1 of this section.

Example 1. Corporation T files timely 10,000 Forms 1099–INT (relating to payments of interest) for 1990 by February 28, 1991. The 10,000 returns are all the information returns that T is required to file during the 1991 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 1991. No penalty is imposed for 50 of the failures (*i.e.,* the greater of 10 or .005 × 10,000 = 50) even though the total failures, 70, exceed the number to which the *de minimis* exception may apply. The $30 penalty under paragraph (b)(2) of this section is imposed, in lieu of $50, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of $600 ($30 × 20 = $600).

Example 2. Corporation U files timely 9,500 Forms 1099–INT for 1990 by February 28, 1991, the required filing date. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 1991. U also files 500 Forms 1099–INT for 1990 on August 30, 1991, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 1991 calendar year. The calculation of the *de minimis* exception is based on the 10,000 returns required to be filed during the 1991 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the *de minimis* exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099–INT that were corrected on August 1, 1991. However, the $50 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely, resulting in a total penalty of $25,000 ($50 × 500 = $25,000).

Example 3. Corporation V files timely 9,950 Forms 1099–INT for 1990 by February 28, 1991. However, V fails to file timely 50 of its Forms 1099–INT. The 10,000 returns are all the information returns that V is required to file during the 1991 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 1991. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 1991. Absent application of the *de minimis* exception, the penalty imposed for the failure to include correct information would be $1,500 ($30 × 50 = $1,500). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the *de minimis* exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the *de minimis* exception does not apply to the penalty for the failure to file timely. Hence, a penalty of $750 ($15 × 50 = $750) is imposed.

Example 4. Corporation W files timely 100 Forms 1099–DIV and files an additional 50 Forms 1099–DIV late, but within 30 days of February 28, 1991. These are all the information returns that W was required to file during the 1991 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The *de*

minimis exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (*i.e.*, applying the exception to a return filed late with incorrect information would save W $15, by reducing the penalty on that return from $30 to $15, but applying the exception to a return filed timely would save W $30, by reducing the penalty on that return from $30 to $0). (See paragraph (b)(4) of this section.)

(4) *Nonapplication to returns not due on February 28 or March 15.* The exception for a *de minimis* number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on February 28 or March 15 (for example, Forms 8300 reporting certain cash payments of $10,000 or more). Nevertheless, the returns that are not due on February 28 or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the *de minimis* exception under paragraph (d)(2) of this section.

(e) *Lower limitations on the $250,000 maximum penalty amount with respect to persons with gross receipts of not more than $5,000,000*—(1) *In general.* If a person meets the gross receipts test (as defined in paragraph (e)(2) of this section) for any calendar year, the total amount of the penalty imposed on such person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during such calendar year shall not exceed $100,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed $25,000 for such calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed $50,000 for such calendar year.

(2) *Gross receipts test.* A person meets the gross receipts test for any calendar year if the average annual gross receipts for such person for the three most recent taxable years ending before such calendar year do not exceed $5,000,000. For purposes of determining the amount of gross receipts during the three most recent taxable years, the rules of section 448(c) (2) and (3) shall apply.

(f) *Higher penalty for intentional disregard of requirement to file timely correct information returns*—(1) *Application of section 6721(e).* If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (g) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (f)(4) of this section.

(2) *Meaning of ''intentional disregard.''* A failure is due to intentional disregard if it is a knowing or willful—

(i) Failure to file timely, or

(ii) Failure to include correct information. Whether a person knowingly or willfully fails to file timely or fails to include correct information is determined on the basis of all the facts and circumstances in the particular case.

(3) *Facts and circumstances considered.* The facts and circumstances that are considered in determining whether a failure is due to intentional disregard include, but are not limited to—

(i) Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information;

(ii) Whether correction was promptly made upon discovery of the failure;

(iii) Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the Internal Revenue Service to file or to correct; and

(iv) Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.

(4) *Amount of the penalty.* If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to file timely or to include correct information, then, with respect to each such failure determined under this paragraph (f)—

(i) Paragraphs (b), (d), and (e) of this section shall not apply;

(ii) The $250,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (f) shall not be taken into account in applying the $250,000 limitation (or any similar limitation under paragraph (b) or (e) of this section) to penalties not determined under this paragraph (f);

(iii) The penalty imposed under paragraph (a) of this section shall be $100 or, if greater, the statutory percentage; and

(iv) The term ''statutory percentage'' means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I (for amounts received after November 5, 1990), 6050J, 6050K, or 6050L, 10 percent of the aggregate dollar amount of the items required to be reported correctly,

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly, or

(C) In the case of a return required to be filed under section 6050I(a) with respect to amounts received after November 5, 1990, for any transaction (or related transactions), the greater of $25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed $100,000.

(5) *Computation of the penalty; aggregate dollar amount of the items required to be reported correctly.* The aggregate dollar amount used in computing the penalty under this paragraph (f) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be reported, only the $800 amount is taken into account in computing the penalty.

(6) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example 1. On December 1, 1990, Automobile dealer P receives $55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as ''John Doe.'' However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the payor. Because P knew at the time of filing the Form 8300 that the payor's name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (f)(2) of this section. Therefore, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is $55,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is $55,000 (*i.e.*, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

Example 2. On December 1, 1990, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F $20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the payor, F writes ''confidential.'' Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (f)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (f)(5) of this section is $20,000 (*i.e.*, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (f)(4)(ii)(C) of this section is $25,000 (*i.e.*, the greater of $25,000 or the amount of cash received in the transaction up to $100,000).

Example 3. Corporation M deliberately does not include $5,000 of dividends on a Form 1099–DIV (relating to payments of dividends) on which a total of $200,000 (including the $5,000 dividends) is required to be reported

under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) is determined under paragraph (f)(4) of this section. Because the Form 1099–DIV is required to be filed under section 6042(a), under paragraph (f)(4)(ii)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (f)(5) of this section, $5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is $500 ($5,000 × .10 = $500).

Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of $1,000,000, when the correct amount was $1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show $80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of $120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as $80,000. Thus A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the correct amount of $40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be $4,000 (*i.e.*, 10 percent of the difference between the $40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(g) *Definitions*—(1) *Information return.* For purposes of this section the term ''information return'' means any statement described in paragraph (g)(2) of this section, any return described in paragraph (g)(3) of this section, and any other items described in paragraph (g)(4) of this section.

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099–MISC, ''Miscellaneous Income''; Form W–2, ''Wage and Tax Statement''; Form W–2G, ''Certain Gambling Winnings''; and Form 1099–INT, ''Interest Income'');

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099–DIV, ''Dividends and Distributions'');

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099–PATR, ''Taxable Distributions Received From Cooperatives'');

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099–INT or Form 1099–OID, ''Original Issue Discount'');

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099–MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099–MISC);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W–2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099–MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.''); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099–R).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099–MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099–B, ''Proceeds From Broker and Barter Exchange Transactions,'' for broker transactions; Form 1099–S, ''Proceeds From Real Estate Transactions,'' for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, ''Mortgage Interest Statement'');

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, ''Report of Cash Payments Over $10,000 Received In a Trade or Business'');

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099–A, ''Acquisition or Abandonment of Secured Property'');

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, ''Report of a Sale or Exchange of Certain Partnership Interests'');

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, ''Donee Information Return'');

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally reported on Form 1099–C, ''Cancellation of Debt'');

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099–LTC, ''Long-Term Care and Accelerated Death Benefits'');

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally reported on Form 1098–E, ''Student Loan Interest Statement,'' or Form 1098–T, ''Tuition Statement'');

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099–H, ''Health Coverage Tax Credit (HCTC) Advance Payments'');

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W–2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, ''Applicable Insurance Contract Information Return'');

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips, generally reported on Form 8027, ''Employer's Annual Information Return of Tip Income and Allocated Tips'');

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, ''Asset Acquisition Statement''), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099–R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options);

(xxiii) Section 6050W (relating to information returns with respect to payments made in settlement of payment

card and third party network transactions);

(xxiv) Section 6055 (relating to information returns reporting minimum essential coverage); or

(xxv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members).

(4) *Other items.* The term *information return* also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally Forms 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax.'' The provisions of this paragraph (g)(4) referring to Form 8805, shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446–1 through 1.1446–5 of this chapter apply by reason of an election under § 1.1446–7 of this chapter.

(5) *Payee.* For purposes of section 6721 the term ''payee'' means any person who is required to receive a copy of the information set forth on an information return by the filer of the return as defined in section 6724(d)(1).

(6) *Filer.* For purposes of this section the term ''filer'' means a person that is required to file an information return as defined in paragraph (g)(1) of this section under the applicable information reporting section described in paragraph (g) (2) through (4) of this section.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, as amended by T.D. 8843, 64 FR 61504, Nov. 12, 1999; T.D. 9200, 70 FR 28742, May 18, 2005; T.D. 9496, 75 FR 49836, Aug. 16, 2010; T.D. 9504, 75 FR 64103, Oct. 18, 2010; T.D. 9660, 79 FR 13231, Mar. 10, 2014]

§ 301.6722–1 Failure to furnish correct payee statements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each payee statement (as defined in section 6724(d)(2)) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A ''composite substitute payee statement'' is a single document created by a filer to reflect several types of payments made to the same payee. The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed $100,000. See section 6722(c) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (a)(1) of § 301.6724–1 for a waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which section 6722(a) and paragraph (a)(1) of this section apply are—

(i) A failure to furnish a payee statement on or before the prescribed date therefore to the person to whom such statement is required to be furnished (''failure to furnish timely''), and

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information (''failure to include correct information''). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) 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).

(b) *Exception for inconsequential errors or omissions*—(1) *In general.* An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (b), the term ''inconsequential error or omission'' means any failure that cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her return or from otherwise putting the statement to its intended use.

(2) *Errors or omissions that are never inconsequential.* Errors or omissions relating to the following are never inconsequential:

(i) A dollar amount,

(ii) The significant items in the address of a payee, which is the address provided by the payee to the filer,

(iii) The appropriate form for the information provided (*i.e.*, whether or not the form is an acceptable substitute for an official form of the Internal Revenue Service), and

(iv) The manner of furnishing a statement required under sections 6042(c), 6044(e), 6049(e), and 6050N(b). The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under paragraph (a) of § 301.6724–1:

Example 1. A payor furnishes a statement with respect to a Form 1099–MISC (relating to miscellaneous income). The payee statement is complete and correct, except the word ''boulevard'' is misspelled in the payee's address. The error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use. Therefore, no penalty is imposed under paragraph (a) of this section.

Example 2. Assume the same facts in *Example 1,* except that the only error on the payee statement is that the payee's street address, 4821 Grant Boulevard, is reported incorrectly as 8421 Grant Boulevard. A penalty is imposed under paragraph (a) of this section with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return or from otherwise putting the statement to its intended use.

(c) *Higher penalty for intentional disregard of requirement to furnish timely correct payee statements*—(1) *Application of section 6722(c).* If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under § 301.6721–1(f)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) *Amount of the penalty.* If one or more failures under paragraph (a) of this section are due to intentional disregard of the requirement to furnish timely payee statements or of the requirement to include correct information, then, with respect to each such failure determined under this paragraph (c)(2)—

(i) The $100,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the $100,000 limitation to penalties not determined under this paragraph (c)(2);

(ii) The penalty imposed under paragraph (a) of this section shall be $100 or, if greater, the statutory percentage; and

(iii) The term ''statutory percentage'' means—

(A) In the case of a payee statement other than a statement required under section 6045(b), 6041A(e) (in respect of a return required under section 6041A(b)), 6050H(d), 6050J(e), 6050K(b), or 6060L(c), 10 percent of the aggregate dollar amount of the items required to be reported correctly, or

(B) In the case of a payee statement required under section 6045(b), 6050K(b), or 6050L(c), 5 percent of the aggregate

dollar amount of the items required to be reported correctly.

(3) *Computation of the penalty; aggregate dollar amount of items required to be shown correctly*. The aggregate dollar amount used in computing the penalty under this paragraph (c) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining such amount the same item shall be counted only once. For example, if a filer willfully fails to furnish a Form 1099–INT on which $800 of interest and $160 of Federal income tax withheld (*i.e.*, backup withholding) is required to be shown, only the $800 amount is taken into account in computing the penalty.

(d) *Definitions*—(1) *Payee*. See § 301.6721–1(g)(5) for the definition of ''payee.''

(2) *Payee statement*. The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K–1 (Form 1065), ''Partner's Share of Income, Deductions, Credits, etc.,'' for section 6031(b) or (c), a copy of the Schedule K–1 (Form 1041), ''Beneficiary's Share of Income, Deductions, Credits, etc.,'' for section 6034A, and a copy of Schedule K–1 (Form 1120S), ''Shareholder's Share of Income, Deductions, Credits, etc.,'' for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099–MISC, ''Miscellaneous Income''; Form W–2, ''Wage and Tax Statement''; Form 1099–INT, ''Interest Income''; and the winner's copies of Form W–2G, ''Certain Gambling Winnings'');

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099–MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099–DIV, ''Dividends and Distributions'');

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099–PATR, ''Taxable Distributions Received From Cooperatives'');

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099–B, ''Proceeds From Broker and Barter Exchange Transactions,'' for broker transactions; the transferor copy of Form 1099–S, ''Proceeds From Real Estate Transactions,'' for reporting proceeds from real estate transactions; and the recipient copy of Form 1099–MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099–INT or Form 1099–OID, ''Original Issue Discount'');

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099–MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, ''Mortgage Interest Statement'');

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., generally a copy of Form 8300, ''Report of Cash Payments Over $10,000 Received In a Trade or Business'');

(xv) Section 6050J(e) (relating to returns relating to foreclosures and

abandonments of security, generally the borrower copy of Form 1099–A, ''Acquisition or Abandonment of Secured Property'');

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, ''Report of a Sale or Exchange of Certain Partnership Interests'');

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, ''Donee Information Return'');

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099–MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099–C, ''Cancellation of Debt'');

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the policyholder and insured copies of Form 1099–LTC, ''Long-Term Care and Accelerated Death Benefits'');

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099–MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W–2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W–2);

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W–2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520–A, ''Annual Information Return of Foreign Trust With a U.S. Owner'');

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans on the recipient copies of Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.'');

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099–R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098–E, ''Student Loan Interest Statement,'' or the student copy of Form 1098–T, ''Tuition Statement'');

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099–H, ''Health Coverage Tax Credit (HCTC) Advance Payments'');

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally the recipient copy of Form 1099–R);

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions);

(xxxiii) Section 6055 (relating to information returns reporting minimum essential coverage); or

(xxxiv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members).

(3) *Other items.* The term *payee statement* also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States) (generally the recipient copy of Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax.'')

(e) *Effective/Applicability date.* The reference in paragraph (d)(3) of this section to Form 8805 shall apply to partnership taxable years beginning after *April 29, 2008.*

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, as amended by T.D. 9394, 73 FR 23086, Apr. 29, 2008; T.D. 9496, 75 FR 49836, Aug. 16, 2010; T.D. 9504, 75 FR 64104, Oct. 18, 2010; T.D. 9660, 79 FR 13231, Mar. 10, 2014]

§ 301.6723–1 Failure to comply with other information reporting requirements.

(a) *Imposition of penalty*—(1) *General rule.* A penalty of $50 is imposed for each failure to comply timely with a specified information reporting requirement (as defined in paragraph (a)(4) of this section) or for each failure to include correct specified information. Multiple penalties are imposed with respect to a document with failures to comply with more than one of the requirements set forth in paragraph (a)(4) of this section or multiple instances of failures to comply with any one of these requirements. Nonetheless, if a failure that occurs with respect to any requirement defined in paragraph (a)(4) of this section would be subject to a penalty under both paragraph (a)(2)(i) and paragraph (a)(2)(ii) of this section, no more than one penalty is imposed for such failure. The total amount imposed on any person for all failures during any calendar year with respect to all specified information reporting requirements shall not exceed $100,000. See paragraph (a) of § 301.6724–1 for the waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which paragraph (a)(1) of this section apply are—

(i) A failure to comply timely with a specified information reporting requirement on or before the date prescribed therefor (''failure to comply timely''), and

(ii) A failure to include all the information required by a specified information reporting requirement or the inclusion of incorrect information (''failure to include correct information'').

(3) *Exception for inconsequential errors or omissions.* An inconsequential error or omission is not considered a failure to comply with a specified information reporting requirement. For purposes of paragraph (a)(3) of this section, an error or omission is considered inconsequential if it does not frustrate the purpose or use for which the information is intended.

(4) *Specified information reporting requirement defined.* For purposes of section 6723 and this section, a ''specified information reporting requirement'' means—

(i) The requirement to provide the notice under section 6050K(c)(1) (relating to the requirement that a transferor notify the partnership of an exchange of a partnership interest);

(ii) Any requirement contained in the regulations under section 6109 that a person—

(A) Include his or her taxpayer identification number (''TIN'') on any return, statement, or other document (other than an information return or payee statement),

(B) Include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person, or

(C) Furnish his or her TIN to another person;

(iii) Any requirement contained in the regulations under section 215 that a person—

(A) Furnish his or her TIN to another person, or

(B) Include on his or her return the TIN of another person; and

(iv) The requirement under section 6109(e) that a person include the TIN of any dependent on his or her return.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples which do not take into account the reasonable cause waiver under section 6724(a) and paragraph (a)(1) of § 301.6724–1.

Example 1. Individual A, who has two dependents ages 7 and 9, files his 1990 Form 1040 in 1991. The Form 1040 requires him to provide the TINs of his two dependents, which A fails to do. Because A fails to comply timely with two requirements to include on his return the TIN of another person, a $50 penalty under paragraph (a) of this section is imposed on A for each of the two failures, for a total penalty of $100.

Example 2. In 1991 Individual B opens with Bank X an account which pays reportable interest under section 6049. When B opens the account, Bank X requests that B provide his TIN on a Form W–9. B does not provide his TIN as required by §301.6109–1(b). As a result B fails to comply timely with a specified information reporting requirement under paragraph (a) of this section for furnishing his TIN to another person. Therefore, a $50 penalty is imposed on B under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which X may be subject if X files a Form 1099–INT (relating to payments of interest) for calendar year 1991 without B's TIN. See section 3406(a)(1)(A) which requires X to impose backup withholding on reportable payments of interest to B's account.

Example 3. In 1991 Individual C is a nonresident alien with an account inside the U.S. with Bank Z. The account pays interest that would be reportable under section 6049 but for the fact that it is paid to a nonresident alien. Under section 6109 and §301.6109–1(b), Bank Z is required to request the TIN from C. C claims that he is a nonresident alien and that his account is not subject to information reporting under section 6049. Because of this, C contends he is not required to provide any TIN information. As a result of this discussion, Bank Z then requests C to provide it with a Form W–8 in order for C to certify that he is a nonresident alien which C fails to do. C fails to comply timely with a specified information reporting requirement under paragraph (a) of this section to furnish his TIN to another person. Therefore, a penalty is imposed on C under paragraph (a) of this section for the failure. See section 6721(a) for the penalty that may be imposed on Z if Z files a Form 1099–INT for calendar year 1991 without C's TIN. See section 3406(a)(1)(A) under which Z is required to impose backup withholding on reportable payment of interest to C's account.

Example 4. In 1991 Partnership D opens with Bank Y an account that pays reportable interest under section 6049. When D opens the account, Y requests the partnership's employer identification number (EIN) on a Form W–9 as required under §301.6109–1(b). The partnership provides its EIN on the Form W–9. Y files an information return with respect to D for the 1991 calendar year. Subsequently, the Internal Revenue Service later notifies Y that D's EIN is incorrect as defined under section 3406 and §35a.3406–1(a)(6). D fails to comply timely with a specified reporting requirement under paragraph (a) of this section of furnishing its correct EIN to another person. Therefore, a penalty is imposed on D under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which Y may be subject if Y files a Form 1099–INT for calendar year 1991 without D's correct EIN. See section 3406(a)(1)(B), which requires Y to impose backup withholding on reportable payments of interest to B's account when the Internal Revenue Service or a broker has notified Y that the EIN is incorrect.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991]

§ 301.6724–1 Reasonable cause.

(a) *Waiver of the penalty*—(1) *General rule.* The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Reasonable cause defined.* The penalty is waived for reasonable cause only if the filer establishes that either—

(i) There are significant mitigating factors with respect to the failure, as described in paragraph (b) of this section; or

(ii) The failure arose from events beyond the filer's control (''impediment''), as described in paragraph (c) of this section.

Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence.

(b) *Significant mitigating factors.* In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. The mitigating factors include, but are not limited to—

(1) The fact that prior to the failure the filer was never required to file the particular type of return or furnish the

particular type of statement with respect to which the failure occurred, or

(2) The fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to—

(i) Whether the filer has incurred any penalty under §§ 301.6721–1, 301.6722–1, or 301.6723–1 in prior years for the failure (or under parallel provisions of prior law), and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

A filer may treat as a penalty not incurred any penalty under sections 6721 through 6723 that was self-assessed under section 6724(c)(3) and any penalty under section 6676(b) that was self-assessed under section 6676(d), prior to amendment or repeal by the Omnibus Budget Reconciliation Act of 1989. See paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent.

(c) *Events beyond the filer's control*—(1) *In general.* In order to establish reasonable cause under this paragraph (c)(1), the filer must satisfy paragraph (d) of this section and must show that the failure was due to events beyond the filer's control. Events which are generally considered beyond the filer's control include but are not limited to—

(i) The unavailability of the relevant business records (as described in paragraph (c)(2) of this section),

(ii) An undue economic hardship relating to filing on magnetic media (as described in paragraph (c)(3) of this section),

(iii) Certain actions of the Internal Revenue Service (as described in paragraph (c)(4) of this section),

(iv) Certain actions of an agent (as described in paragraph (c)(5) of this section), and

(v) Certain actions of the payee or any other person providing necessary information with respect to the return or payee statement (as described in paragraph (c)(6) of this section).

(2) *Unavailability of the relevant business records.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the unavailability of the relevant business records, the filer's business records must have been unavailable under such conditions, in such manner, and for such period as to prevent timely compliance (ordinarily at least a 2-week period prior to the due date (with regard to extensions) of the required return or the required date (with regard to extensions) for furnishing the payee statement), and the unavailability must have been caused by a supervening event. A ''supervening event'' includes, but is not limited to—

(i) A fire or other casualty that damages or impairs the filer's relevant business records or the filer's system for processing and filing such records;

(ii) A statutory or regulatory change that has a direct impact upon data processing and that is made so close to the time that the return or payee statement is required that, for all practical purposes, the change cannot be complied with; or

(iii) The unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for filing a return or furnishing a payee statement.

(3) *Undue economic hardship relating to filing on magnetic media.* In order to establish reasonable cause under paragraph (c)(1) of this section due to an undue economic hardship for filing on magnetic media, the filer must show that it failed to file on magnetic media because the filer lacked the necessary hardware. For purposes of this paragraph (c)(3), the filer will not be considered to have acted in a responsible manner under paragraph (d) of this section unless—

(i) The filer attempted on a timely basis to contract out the magnetic media filing;

(ii) The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions) (90 days for information returns the due date for which (without regard to extensions) is after December 31, 1989, and by or before February 28, 1991 (March 15, 1991, for Forms 1042S));

(iii) The cost was supported by a minimum of two cost estimates from unrelated parties; and

(iv) The filer filed the returns on paper. Reasonable cause will not ordinarily be established under this paragraph (c)(3) if a filer received a reasonable cause waiver in any prior year under paragraph (c)(1) of this section due to an undue economic hardship relating to filing on magnetic media.

(4) *Actions of the Internal Revenue Service.* In order to establish reasonable cause under paragraph (c)(1) of this section due to certain actions of the Internal Revenue Service, a filer must show that the failure was due to the filer's reasonable reliance on erroneous written information from the Internal Revenue Service. Reasonable reliance means that the filer relied in good faith on the information. The filer shall not be considered to have relied in good faith if the Internal Revenue Service was not aware of all the facts when it provided the information to the filer. In order to substantiate reasonable cause under this paragraph (c)(4), the filer must provide a copy of the written information provided by the Internal Revenue Service and, if applicable, the filer's written request for the information.

(5) *Actions of agent—imputed reasonable cause.* In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of an agent, the filer must show the following:

(i) The filer exercised reasonable business judgment in contracting with the agent to file timely correct returns or furnish timely correct payee statements with respect to which the failure occurred. This includes contracting with the agent and providing the proper information sufficiently in advance of the due date of the return or statement to permit timely filing of correct returns or timely furnishing of correct payee statements; and

(ii) The agent satisfied the reasonable cause criteria set forth in paragraph (b) or one of the reasonable cause criteria set forth in paragraph (c) (2) through (6) of this section.

(6) *Actions of the payee or any other person.* In order to establish reasonable cause under paragraph (c)(1) of this section due to the actions of the payee or any other person, such as a broker as defined in section 6045(c) providing information with respect to the return or payee statement, the filer must show either—

(i) That the failure resulted from the failure of the payee, or any other person required to provide information necessary for the filer to comply with the information reporting requirements (''any other person''), to provide information to the filer, or

(ii) That the failure resulted from incorrect information provided by the payee (or any other person) upon which information the filer relied in good faith. To substantiate reasonable cause under this paragraph (c)(6), the filer must provide documentary evidence upon request of the Internal Revenue Service showing that the failure was attributable to the payee (or any other person). See paragraph (d)(2) of this section for special rules relating to the availability of a waiver where the filer's failure relates to a taxpayer identification number (TIN), and the failure is attributable to actions of the payee described in paragraph (c)(6) (i) or (ii) of this section.

(d) *Responsible manner*—(1) *In general.* Acting in a responsible manner means—

(i) That the filer exercised reasonable care, which is that standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations and in handling account information such as account numbers and balances, and

(ii) That the filer undertook significant steps to avoid or mitigate the failure, including, where applicable—

(A) Requesting appropriate extensions of time to file, when practicable, in order to avoid the failure,

(B) Attempting to prevent an impediment or a failure, if it was foreseeable,

(C) Acting to remove an impediment or the cause of a failure, once it occurred, and

(D) Rectifying the failure as promptly as possible once the impediment was removed or the failure was discovered. Ordinarily, a rectification is considered prompt if it is made within 30 days after the date the impediment is removed or the failure is discovered or on

the earliest date thereafter on which a regular submission of corrections is made. Submissions will be considered regular only if made at intervals of 30 days or less. A failure may be rectified by filing or correcting the information return, furnishing or correcting the payee statement, or by providing or correcting the information to satisfy the specified information reporting requirement with respect to which the failure occurs. Paragraph (d)(ii)(D) of this section does not apply with respect to information the filer is prohibited from altering under specific information reporting rules. See §1.6045–4(i)(5) of this chapter.

(2) *Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.* A filer seeking a waiver for reasonable cause pursuant to paragraph (c)(6) of this section with respect to a failure resulting from a missing or an incorrect TIN will be deemed to have acted in a responsible manner in compliance with this paragraph (d) only if the filer satisfies the requirements of paragraph (e) of this section (relating to missing TINs) or paragraph (f) of this section (relating to incorrect TINs), whichever is applicable.

(e) *Acting in a responsible manner—special rules for missing TINs*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN or an information return resulted from the failure of the payee to provide information to the filer (*i.e.*, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (required solicitations). For purposes of this section, a number is treated as a ''missing TIN'' if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral) as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. See paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. See paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term ''account'' includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see §31.3406(h)–3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations (''annual solicitations'').

(ii) *First annual solicitation.* Except as provided in paragraph (e)(1)(vi) of this section, a filer must undertake an annual solicitation if a TIN is not received as a result of an initial solicitation (or if the filer was not required to make an initial solicitation under paragraph (e)(1)(i) of this section and the filer has not received a payee's TIN). The first annual solicitation must be made on or before December 31 of the year in which the account is

opened (for accounts opened before December) or January 31 of the following year (for accounts opened in the preceding December) (''annual solicitation period'').

(iii) *Second annual solicitation.* If the TIN is not received as a result of the first annual solicitation, the filer must undertake a second annual solicitation. The second annual solicitation must be made after the expiration of the annual solicitation period and on or before December 31 of the year immediately succeeding the calendar year in which the account is opened.

(iv) *Additional requirements.* After receiving a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(v) *Failures to which a solicitation relates.* The initial and first annual solicitations relate to failures on returns filed for the year in which an account is opened. The second annual solicitation relates to failures on returns filed for the year immediately following the year in which an account is opened and for succeeding calendar years.

(vi) *Exceptions and limitations.* (A) The solicitation requirements under this paragraph (e) do not apply to the extent an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721–1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (e) will be satisfied only if the filer complies with the manner and time period requirements of the specific information reporting provision and the provisions of this paragraph (e) to the extent applicable. Also, see section 3406(e) which provides rules on the manner and time period in which a TIN must be provided for certain accounts with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(B) An annual solicitation is not required to be made for a year under this paragraph (e) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721–1 is required to be filed for the account for the year.

(C) If a filer fails to make one (or more) of the required solicitations under paragraphs (e)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by—

(*1*) Making two consecutive annual solicitations in subsequent years (''make-up solicitations''), and

(*2*) Satisfying paragraph (e)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (e)(1)(vi)(B) of this section applies shall be disregarded. If a filer fails to make the initial solicitation under paragraph (e)(1)(i) of this section, the make-up solicitations described in this paragraph (e)(1)(vi)(C) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures with respect to years for which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make its initial solicitation) if the second make-up solicitation is made in the following year.

(D) A financial institution is not required to make an annual solicitation by mail on accounts with ''stop-mail'' or ''hold-mail'' instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(E) A filer is not required to make annual solicitations on accounts with respect to which the filer undertook two consecutive annual mailings by December 31, 1989, under Q/A-5 through Q/A-7B or under Q/A-56 of § 35a.9999–1 of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, as provided under section 6676(b) (prior to its

amendment by the Omnibus Budget Reconciliation Act of 1989).

(F) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(G) Except as provided in paragraph (e)(1)(vi) (A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

(2) *Manner of making annual solicitations—by mail or telephone*—(i) *By mail.* A mail solicitation must include—

(A) A letter informing the payee that he or she must provide his or her TIN and that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(B) A Form W–9 or an acceptable substitute form, as defined in §31.3406 (h)–3 (a), (b), or (c) of this chapter, on which the payee may provide the TIN, and

(C) A return envelope for the payee to provide the TIN which may be, but is not required to be, postage prepaid.

(ii) *By telephone.* An annual solicitation may be made by telephone if the solicitation procedure is reasonably designed and carried out in a manner that is conducive to obtaining the TIN. An annual solicitation is made pursuant to this paragraph (e)(2)(ii) for a failure if the filer—

(A) Completes a call to each person with a missing TIN and speaks to an adult member of the household, or to an officer of the business or the organization,

(B) Requests the TIN of the payee,

(C) Informs the payee that he or she is subject to a $50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

(D) Maintains contemporaneous records showing that the solicitation was properly made, and

(E) Provides such contemporaneous records to the Internal Revenue Service upon request.

(f) *Acting in a responsible manner—special rules for incorrect TINS*—(1) *In general.* A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (*i.e.*, inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). See paragraph (e)(1) of this section for the definition of the term ''solicitation.'' See paragraph (f)(5)(i) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

(i) *Initial solicitation.* An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term ''account'' includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see §31.3406(h)–3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. No additional solicitation is required after the filer receives the TIN unless the Internal Revenue Service or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraph (f)(1) (ii) and (iii) of this section.

(ii) *First annual solicitation.* Except as provided in paragraph (f)(5) of this section, a filer must undertake an annual solicitation only if the payor has been notified of an incorrect TIN and such account contains the incorrect TIN at the time of the notification. The first annual solicitation must be made as required by paragraph (f) (2) or (3) of this section, whichever applies. An account contains an incorrect TIN at the time of notification if the name and number combination on the account matches the name and number combination set forth on the notice from the Internal Revenue Service or a broker. A filer may be notified of an incorrect TIN by the Internal Revenue Service or by a broker pursuant to section 3406(a)(1)(B) or by a penalty notice issued by the Internal Revenue Service pursuant to section 6721. Except as otherwise provided in this section, the annual solicitation required by this paragraph (f) must be made on or before December 31 of the year in which the filer is notified of the incorrect TIN or by January 31 of the following year if the filer is notified of an incorrect TIN in the preceding December.

(iii) *Second annual solicitation.* A filer must undertake a second annual solicitation as required by paragraph (f) (2) or (3) of this section, whichever applies, if the filer is notified in any year following the year of the notification described in paragraph (f)(1)(ii) of this section that the account of a payee contains an incorrect TIN, as described in paragraph (f)(1)(ii) of this section.

(iv) *Additional requirements.* Upon receipt of a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

(2) *Manner of making annual solicitation if notified pursuant to section 6721.* A filer that has been notified of an incorrect TIN by a penalty notice or other notification pursuant to section 6721 may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section; by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section; or by requesting the TIN in person.

(3) *Coordination with solicitations under section 3406(a)(1)(b).* (i) A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) (except filers to which §31.3406(d)-5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under §31.3406(d)-5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which §31.3406(d)-5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if—

(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either during the same calendar year or for information returns filed for the same year; and

(B) The filer makes a solicitation in the manner and within the time period required under §31.3406(d)-5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies, before the filer is required to make the annual solicitation of this paragraph (f).

(iii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 with respect to a fiduciary or nominee account to which §31.3406(d)-5(b)(4)(i)(A) of this chapter applies is required to make the annual solicitation of this paragraph (f).

(4) *Failures to which a solicitation relates.* The initial solicitation relates to failures on returns filed for the year an account is opened and for any succeeding year that precedes the year in which the filer receives a notification of an incorrect TIN. The first and second annual solicitations relate to failures on returns filed for the year in which a notification of an incorrect TIN is received. The second solicitation also relates to failures on returns filed for succeeding calendar years.

(5) *Exceptions and limitations.* (i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a return, as defined in paragraph (g) of §301.6721–1, is filed provides specific requirements relating

to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721–1 is required to be filed for the account for such year.

(iii) If a filer fails to make one (or more) of the required solicitations under paragraph (f)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by:

(A) Making two consecutive annual solicitations in subsequent years (''make-up solicitations''), and

(B) Satisfying paragraph (f)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (f)(5)(ii) of this section applies are disregarded. If a filer fails to make the initial solicitation under paragraph (f)(1)(i) of this section, the make-up solicitations described in this paragraph (f)(5)(iii) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures in years in which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make the initial solicitation) if the second make-up solicitation is made in the following year.

(iv) A financial institution is not required to make an annual solicitation by mail on accounts with ''stop-mail'' or ''hold-mail'' instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

(v) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

(vi) In general, except as provided in paragraph (f)(5) (i) and (iii) of this section, no more than two annual solicitations are required under this paragraph (f) in order for a filer to establish reasonable cause. However, a filer who complies with this paragraph (f) during a calendar year after receiving a notice under section 6721 and who later during the same calendar year receives a notice pursuant to section 3406 may be required to undertake additional annual mailings in such calendar year pursuant to section 3406(a)(1)(B) in order to satisfy the annual solicitation requirement in paragraph (f)(3) of this section.

(g) *Due diligence safe harbor*—(1) *In general.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section if the filer exercises due diligence with respect to failures described in sections 6721 through 6723.

(2) *Special rules relating to TINs.* The following questions and answers provide guidance on the exercise of due diligence for an exception to a penalty under sections 6721 through 6723 for a failure to provide a correct TIN on any information return (as defined in § 301.6721–1(g)), payee statement (as defined in § 301.6722–1(d)), document (as described in § 301.6723–1(a)(4)), or the failure merely to provide a TIN as described in § 301.6723–1(a)(4)(ii).

GENERAL RULE

Q-1. Is a payor subject to a penalty for a failure to provide a correct TIN on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the

TIN furnished to the payor is the payee's correct number, the payor provided that number on an information return, and the number is later determined not to be the payee's correct number?

A-1. A payor is not subject to a penalty for failure to provide the payee's correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the payor was his correct number, and the payor included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

DUE DILIGENCE DEFINED FOR ACCOUNTS OPENED AND INSTRUMENTS ACQUIRED AFTER DECEMBER 31, 1983

Q-2. In order for a payor of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the payor take?

A-2. (1) In general, the payor of an account or instrument that is not a pre-1984 account nor a window transaction must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS to satisfy the due diligence requirement. Therefore, if a payor permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the payor will be liable for the $50 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the payor exercises due diligence in processing such number, *i.e.*, the payor uses the same care in processing the TIN provided by the payee that a reasonably prudent payor would use in the course of the payor's business in handling account information such as account numbers and balances.

(2) Once notified by the IRS (or a broker) that a number is incorrect, a payor is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the payor has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions described in §31.3406(d)–5(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A) (i) through (iv).

Q-3. Is a payor as described in A-2 liable for the penalty if the payor obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

A-3. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

SPECIAL RULES

Q-4. With respect to an instrument transferred without the assistance of a broker, is a payor liable for the penalty for filing an information return with a missing or an incorrect TIN if the payor records on its books a transfer of a readily tradable instrument in a transaction in which the payor was not a party?

A-4. Generally, a payor as described in Q-4 will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the payor if the payor records on its books a transfer in which the payor was not a party. This exception applies until the calendar year in which the payor receives a certified TIN from the payee.

Q-5. Is the payor described in A-4 required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised

due diligence in a subsequent calendar year?

A-5. There is no requirement on the payor to solicit the TIN in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in A-4.

Q-6. Is a payor as described in Q-4 considered to have exercised due diligence if the payee provides a TIN to the payor (whether or not certified), the payor uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

A-6. A payor as described in Q-4 who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in A-4 where the transfer is accompanied with a TIN provided that the payor uses the same care in processing the TIN provided by a payee that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. Thus, a payor will not be liable for the penalty if the payor uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is later determined to be incorrect. However, a payor will not be considered as having exercised due diligence under A-4 after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the required additional actions described in the second paragraph of A-2.

Q-7. Is a payor liable for a penalty for filing an information return with a missing or an incorrect TIN with respect to a post-1983 account or instrument if the payor could have met the due diligence requirements but for the fact that the payor incurred an undue hardship?

A-7. A payor of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the payor could have satisfied the due diligence requirements but for the fact that the payor incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the payor by fire or other casualty (or the place of business of the payor's agent who under a pre-existing written contract had agreed to fulfill the payor's due diligence obligations with respect to the account subject to the penalty and there was no means for the obligations to be performed by another agent or the payor). Undue hardship will also be found to exist if the payor could have met the due diligence requirements only by incurring an extraordinary cost.

Q-8. How does a payor obtain a determination from the IRS that the payor has met the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the payor is subject to the penalty?

A-8. A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the payor could have satisfied the due diligence requirements but for the occurrence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the payor either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A payor may request an undue hardship determination from the district director or the director of the Internal Revenue Service Center where the payor is required to remit the penalty under section 6721(a).

Q-9. Is a pre-1984 account or instrument of a payor that is exchanged for an account or instrument of another payor as a result of a merger of the other payor or acquisition of the accounts or instruments of such payor transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

A-9. No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee.

Q-10. May the acquiring taxpayer described in A-9 rely upon the business records and past procedures of the merged payor or the payor whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

A-10. Yes. The acquiring payor may rely upon the business records and past procedures of the merged payor or of the payor whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

Q-11. To what extent may a payor rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 2001 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1999).

A-11. A payor may rely on the due diligence rules set forth in §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 of this chapter in effect prior to January 1, 2001 (see §§ 35a.9999–1, 35a.9999–2, and 35a.9999–3 as contained in 26 CFR part 35a, revised April 1, 1999) solely for the definitions of terms or phrases used in this paragraph (g)(2).

(3) *Effective dates.* This paragraph (g) is effective for information returns (as defined in section 6724(d)(1)) required to be filed, payee statements (as defined in section 6724(d)(2)) required to be furnished, and specified information (as described in section 6724(d)(3)) required to be reported after December 31, 2000. See § 301.6724–1(g) in effect prior to January 1, 2001 (see § 301.6724–1(g) as contained in 26 CFR part 301, revised April 1, 1999) for substantially similar rules applicable prior to January 1, 2001.

(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.* With respect to 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, a filer will be deemed to have satisfied reasonable cause if, with respect to the failure, the filer would have satisfied reasonable cause under sections 6721, 6722, or 6723 (prior to their amendment by the Omnibus Budget Reconciliation Act of 1989) and the regulations thereunder.

(2) *Special rule on TINs.* With respect to information returns required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, which contain a missing or an incorrect TIN, a filer will be deemed to have satisfied reasonable cause if, at the time the account was opened, the filer—

(i) Exercised due diligence or fulfilled the requirements of Q/A-56 of § 35a.9999–1 of this chapter, as in effect on December 31, 1989, as provided under section 6676(b) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989),

(ii) Requested the TIN according to the regulations under the section requiring the filing of the information return, but if none, under section 6109, or

(iii) Would have satisfied reasonable cause under section 6676(a) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989).

(i) [Reserved]

(j) *Failures to which this section relates.* For purposes of this section, a failure relating to an information reporting requirement means—

(1) A failure described under § 301.6721–1(a)(2) relating to the failure to file timely correct information returns as defined in section 6724(d)(1),

(2) A failure described under § 301.6722–1(a)(2) relating to the failure to furnish timely a correct payee statement as defined in section 6724(d)(2), and

(3) A failure described under § 301.6723–1(a)(2) relating to the failure to timely comply with and to include correct specified information as defined in section 6724(d)(3).

(k) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. (i) On August 1, 1991, Individual A, an independent contractor, establishes a relationship (''an account'') with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his

TIN. On October 1, 1991, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (e)(1)(ii) of this section. A does not provide a TIN to L during 1991. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 1991 calendar year with respect to A's account. A penalty is imposed on L pursuant to paragraph (a)(2) of § 301.6721–1 for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, L must satisfy both paragraphs (c)(6) and (d) of this section. The criteria for obtaining a waiver under these paragraphs are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section, and

(B) L demonstrates that the failure arose from events beyond L's control, as described in paragraph (c)(6) of this section.

(iii) Pursuant to paragraph (d)(2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c)(6) of this section because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721–1 for the failure on the 1991 information return is waived. See section 3406(a)(1)(A) which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

Example 2. (i) On August 1, 1991, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 28, 1992, M includes the TIM that B provided on the Form 1099–INT for the 1991 calendar year. In October 1992 the Internal Revenue Service, pursuant to section 3406(a)(1)(B), notifies M that the 1991 return filed for B contains an incorrect TIN. In April 1993 a penalty is imposed on M pursuant to paragraph (a)(2) of § 301.6721–1 for M's failure to file a correct information return for the 1991 calendar year, *i.e.*, the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c)(6) and (d) of this section. Pursuant to paragraph (d)(2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f)(4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 1991 in the time and manner prescribed in paragraph (f)(1)(i) of this section and reflected the TIM received from B on the 1991 return as required by paragraph (f)(1)(iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721–1 for the failure on the 1991 information return is waived. See section 3406(a)(1)(B) which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

Example 3. (i) *Table.*

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return	B-notice w/ respect to 1991 return.	1992 return filed.

4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 2.* Under § 31.3406(d)–5(d)(2)(i) of this chapter and paragraph (f)(3) of this section, within 15 days of the October 1992 notification of the incorrect TIN from the Internal Revenue Service, M solicits the correct TIN from B. B fails to respond. M timely files the return for 1992 with respect to the account setting forth B's incorrect TIN. In October 1993 the Internal Revenue Service notifies M pursuant to

section 3406(a)(1)(B) that the 1992 return contains an incorrect TIN. In April 1994, a penalty is imposed on M pursuant to paragraph (a)(1)(2) of §301.6721–1 for M's failure to include B's correct TIN on the return for 1992. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

(iii) M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the Internal Revenue Service notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial solicitation for the TIN in 1991 and, after being notified of the incorrect TIN in October 1992, the first annual solicitation within the time and manner prescribed by section 31.3406(d)–5(d)(2)(i) of this chapter and paragraph (f) (1)(ii) and (2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of §301.6721–1 for the failure on the 1992 return is waived due to reasonable cause.

Example 4. (i) *Table.*

1991	2/92	10/92	2/93
Account opened (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.

4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) The facts are the same as in *Example 3.* M timely solicits B's TIN in October 1993, which B fails to provide. M files the return for 1993 with the incorrect TIN. In April 1995 the Internal Revenue Service informs M that the 1993 return contains an incorrect TIN. M does not solicit a TIN from B in 1994 and files a return for 1994 with B's incorrect TIN. M seeks a waiver of the penalty under paragraph (a)(2) of §301.6721–1 for reasonable cause. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 1994. See paragraph (f)(5)(iv) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

Example 5. In 1992, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H and to section 6721. As part of the transaction, C gives N a promissory note providing for repayment of principal and the payment of interest. At the time C incurs the obligation N requests C's TIN, as required under §1.6050H–2(f) of this chapter. C fails to provide the TIN as required by §1.6050H–2(f) of this chapter. N sends solicitations by mail in 1992 and 1993 for the missing TIN, which C fails to provide. However, for 1994 M fails to send the solicitation required by §1.6050H–2(f) of this chapter. N files returns for the 1992, 1993, and 1994 calendar years pursuant to section 6050H without C's TIN. Although N made the initial and the first annual solicitations in 1992 and the second annual solicitation in 1993, N did not solicit the TIN in 1994 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under paragraph (a) of §301.6721–1 for the 1994 information return is not waived.

Example 6. (i) *Table.*

10/91	2/92	10/92	2/93
Account opened. (solicits TIN).	1991 return filed.	B-notice w/ respect to 1991 return.	1992 return filed.

4/93	10/93	02/94	4/94
6721 penalty notice.	B-notice w/ respect to 1992 return.	1993 return filed.	6721 penalty notice for 1992 return.

(ii) On October 1, 1991, Individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 1991 calendar year. In October 1992 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 1991 calendar year contained an incorrect TIN. At

the time R receives this notification, E's account contains the incorrect TIN. On December 31, 1992, R telephones E pursuant to paragraphs (f)(2) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 1992 calendar year, *i.e.*, in February 1993.

(iii) In April 1993, the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721–1 that the information return filed for the 1991 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

(iv) To establish reasonable cause under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (*i.e.*, 1991) and for subsequent years until the calendar year in which the filer receivers a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 1991 calendar year information return is waived due to reasonable cause.

Example 7. (i) The facts are the same as in *Example 6*. In April 1994 the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721–1 that the information return filed for the 1992 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(3) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under § 31.3406(d)–5(g)(1)(ii) of this chapter. Section 31.3406(d)–5(g)(1)(ii) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 1992 information return, and the penalty will not be waived due to reasonable cause.

(l) [Reserved]

(m) *Procedure for seeking a waiver.* In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the district director or the director of the Internal Revenue Service Center where the returns, as defined in section 6724(d), are required to be filed. The statement must—

(1) State the specific provision under which the waiver is being requested, *i.e.*, paragraph (b) or under paragraph (c) (2) through (6),

(2) Set forth all the facts alleged as the basis for reasonable cause,

(3) Contain the signature of the person required to file the return, and

(4) Contain a declaration that it is made under penalties of perjury. See § 1.6061–1 of the Income Tax Regulations for the rules on the signing of returns.

(n) *Manner of payment.* The penalty due under sections 6721 through 6723 shall be paid upon notice and demand by Internal Revenue Service, and in the same manner as a tax liability is paid.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, and amended by T.D. 8409, 57 FR 13035, Apr. 15, 1992; T.D. 8734, 62 FR 53496, Oct. 14, 1997; T.D. 8804, 63 FR 72189, Dec. 31, 1998; T.D. 8856, 64 FR 73413, Dec. 30, 1999; T.D. 9055, 68 FR 22595, Apr. 29, 2003; T.D. 9136, 69 FR 41943, July 13, 2004; [T.D. 9699, 79 FR 63812, Oct. 27, 2014]

Regulations Applicable to Information Returns and Payee Statements the Due Date for Which (Without Regard to Extensions) Is After December 31, 1986, and Before January 1, 1990

§ 301.6723–1A Failure to include correct information.

(a) *General rule.* If any person files an information return (as defined in section 6724(d)(1)) or furnishes a payee statement (as defined in section 6724(d)(2)) the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990, and such person fails to include all of the information required to be shown on such return or

statement or includes incorrect information, such person will be considered to have failed to include correct information. For this purpose, information required to be shown on a return or statement is the information required by the applicable information reporting statute or by any administrative pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form). Except as otherwise provided in this section, any person who fails to include correct information shall pay $5 for each return or statement with respect to which such failure occurs; however, the total amount imposed on any person for all such failures during any calendar year shall not exceed $20,000. See paragraph (e) of this section regarding the higher penalties for intentional disregard of the correct information reporting requirement and for interest and dividend returns and statements.

(b) *Exception for inconsequential omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on an information return if the failure does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. Similarly, the penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on a payee statement if the failure cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return.

(2) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. A payor files a form 1099–MISC (relating to miscellaneous income) with the Internal Revenue Service and furnishes a corresponding statement to the payee. Both the form 1099–MISC and the payee statement are complete and correct, except that the word ''Street'' is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. In addition, the error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. Therefore, the penalty imposed by paragraph (a) of this section will not be assessed.

Example 2. Assume the same facts as in *Example 1,* except that the only error on the form 1099–MISC and the payee statement is that the payee's first name, ''William,'' is misspelled as ''Willaim.'' The penalty imposed by paragraph (a) of this section will not be assessed, for the reasons set forth in *Example 1.*

Example 3. Assume the same facts as in *Example 1,* except that the only error on the form 1099–MISC and the payee statement is that the payee's street address, 4821 Main Street, is incorrectly reported as 8421 Main Street. The penalty imposed by paragraph (a) of this section will not be assessed with respect to the form 1099–MISC if the error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. However, the penalty will be assessed with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. See paragraph (d) of this section regarding waiver of the penalty for reasonable cause or due diligence.

(c) *Exception for corrected omissions and inaccuracies*—(1) *Exception.* The penalty imposed by paragraph (a) of this section generally will not be assessed for a failure to include correct information on an information return or payee statement if the person who filed the return or furnished the statement corrects the failure by the earliest of—

(i) The date that is 30 days after the date that the person discovers the failure; or

(ii) The date that is 30 days after the date of a written request, from the Internal Revenue Service to the person, for corrected information; or

(iii) October 1 (March 1 for payee statements) of the calendar year in which the return or statement is due.

(2) *Limitations on exception.* Notwithstanding paragraph (c)(1) of this section, timely correction of a failure to include correct information on a return or statement will not prevent assessment of the penalty for any failure

that is part of a pattern of conduct, by the person who filed the return or furnished the statement, of repeatedly failing to include correct information. Further, correction of a failure to include correct information will not prevent assessment of the penalty for intentional disregard of the correct information reporting requirement. See paragraph (e)(1) of this section with respect to intentional disregard.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. In January 1987, Bank M prepares forms 1099–INT (relating to interest income) with respect to interest income earned by its depositors in calendar year 1986. M timely files the forms with the Internal Revenue Service and timely furnishes copies to its depositors. On March 16, 1987, M discovers that the amount of backup withholding tax (Federal income tax withheld) was inadvertently omitted from several of the forms and payee copies. Several days later M files corrected forms with the Service and furnishes corrected copies to the affected payees. The penalty for failure to include correct information will not be due with respect to the incomplete forms 1099–INT filed with the Internal Revenue Service, since they were corrected within 30 days after M discovered the omission and before October 1, 1987. However, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987.

Example 2. In January 1987, Corporation N files forms 1099–DIV (relating to dividends and distributions) for calendar year 1986 and furnishes copies to its shareholders. A significant number of the forms and payee copies do not include the amount of backup withholding tax. On December 1, 1987, the Internal Revenue Service provides N with a written request for corrected information. On December 15, 1987, N files corrected forms with the Service and furnishes corrected copies to the payees. The penalty for failure to include correct information will be due with respect to the incomplete forms, since they were not corrected by October 1, 1987. In addition, the penalty will be due with respect to the incomplete copies furnished to the payees, since they were not corrected by March 1, 1987. However, N's correction of the forms is a fact to be considered, along with other facts, in determining whether the higher penalty for intentional failures will be imposed; see paragraph (e)(1)(ii)(B) of this section.

Example 3. In January 1987, Corporation O files forms 1099–DIV for calendar year 1986 and furnishes copies to its shareholders. O intentionally does not include the amount of backup withholding tax for any shareholder. Since the omissions represent an intentional disregard of the correct information reporting requirement, correction of the omissions will not prevent assessment of the penalty for intentional failure to include correct information.

(d) *Waiver for reasonable cause or due diligence*—(1) *Reasonable cause.* Except as provided in paragraph (d)(2) of this section (relating to interest or dividend returns or statements), the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that such failure was due to reasonable cause and not to willful neglect.

(2) *Due diligence.* Paragraph (d)(1) of this section will not apply in the case of any interest or dividend return or statement (as defined in section 6724(c)(5). However, in such a case, the penalty imposed by paragraph (a) of this section will be waived for any failure to include correct information if it is established to the satisfaction of the district director or the director of the internal revenue service center that the person otherwise liable for such penalty exercised due diligence in attempting to include such information. The requirement to exercise due diligence imposes a higher standard of conduct than required under the reasonable cause defense.

(3) *Procedure for seeking waiver.* Reasonable cause (or due diligence) may be established only by submitting a written statement that sets forth all the facts alleged as reasonable cause (or due diligence) and makes an affirmative showing of reasonable cause (or due diligence). The statement must be signed by the person required to file the information return or furnish the payee statement to which the penalty imposed by paragraph (a) of this section relates, and must contain a declaration that is is made under the penalties of perjury. See § 301.6061–1 for rules on the signing of returns.

(e) *Higher penalties in certain cases*—(1) *Intentional disregard of the correct information reporting requirement*—(i) *Application of section 6723(b).* If a person fails to include correct information on

an information return and such failure is due to intentional disregard of the correct information reporting requirement, the penalty imposed by paragraph (a) of this section with respect to such return will be determined under section 6723(b). The penalty prescribed by section 6723(b) for such a return is $100 or, if greater, the amount equal to 10 percent (or, in some cases, 5 percent) of the aggregate amount of the items required to be reported correctly on the return. In the case of any penalty determined under section 6723(b), the $20,000 limitation of paragraph (a) of this section will not apply. In addition, such penalty will not be taken into account in applying the $20,000 limitation to penalties not determined under section 6723(b).

(ii) *Meaning of intentional disregard.* A failure to include correct information on an information return will be treated as due to intentional disregard of the correct information reporting requirement if the person who filed the return knowingly or willfully failed to include correct information at the time the return was filed. Whether a person knowingly or willfully failed to include correct information will be determined on the basis of all of the facts and circumstances in the particular case. Facts and circumstances to be considered for this purpose include, but are not limited to, the following—

(A) Whether the failure to include correct information is part of a pattern of conduct, by the person who filed the return, of repeatedly failing to include correct information on information returns;

(B) Whether the person who filed the return corrects the failure within 30 days after the date of any written request from the Internal Revenue Service for corrected information; and

(C) Whether the person who filed the return can reasonably be expected to have discovered the failure during the calendar year the return was due and, if so, whether timely correction was made.

(2) *Interest and dividend returns and statements.* In the case of any interest or dividend return or statement (as defined in section 6724(c)(5)), the $20,000 limitation of paragraph (a) of this section will not apply. In addition, any penalty imposed by paragraph (a) of this section with respect to such a return or statement—

(i) Will not be taken into account in applying the $20,000 limitation of paragraph (a) of this section with respect to other returns or statements, and

(ii) Will not be taken into account in applying the $100,000 limitations of sections 6721(a) and 6722(a) with respect to any return or statement.

(f) *Manner of payment*—(1) *In general.* Except as provided in paragraph (f)(2) of this section (relating to interest and dividend returns and statements), any penalty imposed by paragraph (a) of this section shall be paid on notice and demand by the Internal Revenue Service and in the same manner as a tax liability is paid.

(2) *Self-assessment for interest and dividend returns and statements.* Any penalty imposed by paragraph (a) of this section with respect to an interest or dividend return or statement will be assessed and collected in the same manner as an excise tax imposed by subtitle D of the Internal Revenue Code, and the deficiency procedures of subchapter B of chapter 63 of the Code will not apply. In such a case, the penalty must be self-assessed and will be due and payable on April 1 of the calendar year following the calendar year for which the return or statement is required. The penalty should be remitted with a properly executed Form 8210 (Self-Assessed Penalties Return).

(g) *Coordination with other penalties*—(1) *Penalty for failure to supply identifying numbers.* Pursuant to section 6723(c), no penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6676 (relating to the failure to supply identifying numbers) with respect to such return or statement.

(2) *Penalty for failure to file information returns or furnish payee statements.* No penalty shall be imposed under paragraph (a) of this section with respect to any return or statement if a penalty is imposed under section 6721 (relating to the failure to file certain information returns) or section 6722 (relating to the failure to furnish certain payee statements) with respect to such return or statement.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example 1. Corporation P timely files Forms 1099–DIV (relating to dividends and distributions) for a calendar year and furnishes copies to its shareholders. Several of these forms and shareholder copies do not include correct taxpayer identification numbers (TINs), and Corporation P does not show that it exercised due diligence in attempting to include correct TINs; therefore, a penalty is imposed under section 6676(b) with respect to these several forms and shareholder copies. Since a penalty is imposed under section 6676, no penalty is imposed under paragraph (a) of this section with respect to the same several forms and shareholder copies.

Example 2. Corporation Q, a bank, fails to file certain required Forms 1099–INT (relating to interest income of its depositors) in a timely fashion. Corporation Q claims that it exercised due diligence in attempting to file the forms on time and that therefore no penalty under section 6721 or 6723 should apply. If the Internal Revenue Service finds that Corporation Q did not exercise due diligence and imposes the failure-to-file penalty under section 6721 with respect to the forms, no penalty will be imposed under paragraph (a) of this section.

Example 3. Corporation R files with the Internal Revenue Service a document purporting to be an information return. The document contains so many omissions and inaccuracies that its utility as an information return is minimized or eliminated. The Service imposes the failure-to-file penalty under section 6721 with respect to the document. Since the failure-to-file penalty is imposed, no penalty will be imposed under paragraph (a) of this section.

(h) *Effective date.* The rules contained in this section are effective January 1, 1987, as applicable to information returns and payee statements the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990. See section 7711 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106 (1989)) for the applicable penalty for certain failures related to information returns and payee statements the due date for which, without regard to extensions, is after December 31, 1989.

[56 FR 15042, Apr. 15, 1991]

General Provisions Relating to Stamps

§ 301.6801–1 Authority for establishment, alteration, and distribution.

(a) *Establishment and alteration.* The Commissioner may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to internal revenue.

(b) *Preparation and distribution of forms, stamps and dies.* The Commissioner shall prepare and distribute all the instructions, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6802–1 Supply and distribution.

(a) *Postmaster General.* The Commissioner shall furnish to the Postmaster General, without prepayment, a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed pursuant to section 6302(b) (authorizing a discretionary method for collecting certain specified taxes) or chapter 69 of the Code, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as are located in county seats or Postmaster General as necessary.

(b) *Designated depositary of the United States.* The district director for the district in which any designated depositary of the United States is located shall furnish to such designated depositary, without prepayment, a suitable quantity of adhesive stamps to be kept on sale by the designated depositary.

(c) *State agents.* Any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State may make application to the district director for the district in which the State agent is located, to be designated for the purpose of being furnished without prepayment, for sale, stamps to be used in payment of the tax imposed by section 4301. The application shall contain the location and post office address of the State