

Pub. L. 98-369, div. A, title VI, § 612(d)(2), July 18, 1984, 98 Stat. 912, added item 6708 "Penalties with respect to mortgage credit certificates".

Pub. L. 98-369, div. A, title I, § 142(c)(2), July 18, 1984, 98 Stat. 682, added item 6708 "Failure to maintain lists of investors in potentially abusive tax shelters".

1983—Pub. L. 98-67, title I, § 104(c)(2), Aug. 5, 1983, 97 Stat. 379, added item 6705.

Pub. L. 97-424, title V, § 515(b)(11)(D), Jan. 6, 1983, 96 Stat. 2182, struck out "or lubricating oil" after "certain fuels" in item 6675.

1982—Pub. L. 97-248, title II, § 292(d)(2)(B), title III, §§ 320(b), 322(b), 324(b), 326(b), 334(c)(2), 340(b)(3), title IV, § 405(c)(3), Sept. 3, 1982, 96 Stat. 574, 612, 613, 616, 617, 627, 634, 670, as amended by Pub. L. 97-448, title III, § 306(c)(2)(B), Jan. 12, 1983, 96 Stat. 2406, substituted "primarily for delay, etc." for "merely for delay." in item 6673, substituted "returns, etc., with respect to foreign corporations or foreign partnerships" for "returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock" in item 6679, and added items 6700 to 6704.

1981—Pub. L. 97-34, title VII, § 721(c), Aug. 13, 1981, 95 Stat. 341, struck out "allowances based on itemized deductions" after "withholding" in item 6682.

1980—Pub. L. 96-603, §§ 1(e)(3), 2(d)(2), Dec. 28, 1980, 94 Stat. 3505, 3510, substituted "returns" for "reports" in item 6685 and added item 6689.

Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, repealed Pub. L. 94-455, § 2005(e)(4), and Pub. L. 95-600, § 702(r)(1)(C), and the amendments made thereby, which resulted in striking out item 6698A "Failure to file information with respect to carryover basis property", which had been added as item 6694 in 1976 and redesignated as item 6698 in 1978. Pub. L. 96-222, §§ 107(a)(2)(E), 201, redesignated item 6698 as 6698A, effective as if included in Pub. L. 95-600.

Pub. L. 96-222, title I, §§ 101(a)(7)(L)(v)(X), 107(a)(2)(E), Apr. 1, 1980, 94 Stat. 201, 223, redesignated item 6698, relating to failure to file information with respect to carry-over basis property, as 6698A and substituted "tax credit employee stock ownership plan" for "ESOP" in item 6699.

1978—Pub. L. 95-600, title VII, § 701(r)(1)(C), Nov. 6, 1978, 92 Stat. 2938, which redesignated item 6694 "Failure to file information with respect to carryover basis property" as item 6698, was repealed by Pub. L. 96-223, § 401(a). See section 401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 95-600, title I, § 141(c)(2), title II, § 211(b), title III, § 362(d)(9), Nov. 6, 1978, 92 Stat. 2794, 2818, 2852, substituted "qualified investment entities" for "real estate investment trusts" in item 6697, and added item 6698 "Failure to file partnership return" and item 6699 "Assessable penalties relating to ESOP".

1976—Pub. L. 94-455, title XX, § 2005(e)(4), Oct. 4, 1976, 90 Stat. 1878, which added item 6694 "Failure to file information with respect to carryover basis property", was repealed by Pub. L. 96-223, § 401(a). See section 401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94-455, title XII, § 1203(i)(3), title XVI, § 1601(b)(2), title XIX, § 1904(b)(10)(A)(vi)(II), (D)(ii), (E)(ii), Oct. 4, 1976, 90 Stat. 1694, 1746, 1817, struck out item 6680 "Failure to file interest equalization tax returns", item 6681 "False equalization tax certificates" and item 6689 "Failure by certain foreign issuers and obligors to comply with United States investment equalization tax requirements" and added item 6694 "Understatement of taxpayer's liability by income tax return preparer" and items 6695 to 6697.

1974—Pub. L. 93-406, title II, §§ 1016(b)(3), 1031(b)(2)(B), 1033(d), 2002(h)(4), Sept. 2, 1974, 88 Stat. 932, 946, 948, 971, substituted "6688" for "6687" as section number in item relating to assessable penalties with respect to information required to be furnished under section 7654, and added items 6690, 6692, and 6693.

1973—Pub. L. 93-17, § 3(d)(3)(B), Apr. 10, 1973, 87 Stat. 17, added item 6689.

1972—Pub. L. 92-606, § 1(f)(7), Oct. 31, 1972, 86 Stat. 1497, added item 6687 relating to assessable penalties with respect to information required to be furnished under section 7654.

Pub. L. 92-512, title I, § 144(b)(2), Oct. 20, 1972, 86 Stat. 936, added item 6687 relating to failure to supply information with respect to place of residence.

1970—Pub. L. 91-258, title II, § 207(d)(13), May 21, 1970, 84 Stat. 249, substituted "fuels" for "gasoline" in item 6675.

1969—Pub. L. 91-172, title I, § 101(j)(60), Dec. 30, 1969, 83 Stat. 532, added items 6684 and 6685.

1966—Pub. L. 89-809, title I, § 104(h)(4)(B), Nov. 13, 1966, 80 Stat. 1560, added item 6683.

Pub. L. 89-368, title I, § 101(e)(4)(B), Mar. 15, 1966, 80 Stat. 62, added item 6682.

1965—Pub. L. 89-44, title II, § 202(c)(3)(B), June 21, 1965, 79 Stat. 139, inserted "or lubricating oil" after "certain gasoline" in item 6675.

1964—Pub. L. 88-563, § 6(c)(1), Sept. 2, 1964, 78 Stat. 847, added items 6680 and 6681.

1962—Pub. L. 87-834, §§ 7(i)(3), 19(g)(2), 20(d)(3), Oct. 16, 1962, 76 Stat. 989, 1058, 1063, added items 6677 to 6679.

1961—Pub. L. 87-397, § 1(c)(2), Oct. 5, 1961, 75 Stat. 829, added item 6676.

1956—Act June 29, 1956, ch. 462, title II, § 208(e)(8), 70 Stat. 397, substituted "Excessive claims with respect to the use of certain gasoline" for "Excessive claims for gasoline used on farms" in item 6675.

Act Apr. 2, 1956, ch. 160, § 4(g), 70 Stat. 91, added item 6675.

## § 6671. Rules for application of assessable penalties

### (a) Penalty assessed as tax

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

### (b) Person defined

The term "person", as used in this subchapter, 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.

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out "or his delegate" after "Secretary".

## § 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax

### (a) General rule

Any person required to collect, truthfully account for, and pay over any tax imposed by this title 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 provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of sub-

chapter A of chapter 68 for any offense to which this section is applicable.

**(b) Preliminary notice requirement**

**(1) In general**

No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) or in person that the taxpayer shall be subject to an assessment of such penalty.

**(2) Timing of notice**

The mailing of the notice described in paragraph (1) (or, in the case of such a notice delivered in person, such delivery) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

**(3) Statute of limitations**

If a notice described in paragraph (1) with respect to any penalty is mailed or delivered in person before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

(A) the date 90 days after the date on which such notice was mailed or delivered in person, or

(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

**(4) Exception for jeopardy**

This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.

**(c) Extension of period of collection where bond is filed**

**(1) In general**

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—

(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

(B) files a claim for refund of the amount so paid, and

(C) furnishes a bond which meets the requirements of paragraph (3),

no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

**(2) Suit must be brought to determine liability for penalty**

If, within 30 days after the day on which his claim for refund with respect to any penalty

under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims)<sup>1</sup> for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the 30-day period referred to in this paragraph.

**(3) Bond**

The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1½ times the amount of excess of the penalty assessed over the payment described in paragraph (1).

**(4) Suspension of running of period of limitations on collection**

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

**(5) Jeopardy collection**

If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.

**(d) Right of contribution where more than 1 person liable for penalty**

If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with—

(1) an action for collection of such penalty brought by the United States, or

(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty.

**(e) Exception for voluntary board members of tax-exempt organizations**

No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

(1) is solely serving in an honorary capacity,

(2) does not participate in the day-to-day or financial operations of the organization, and

(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 95-628, §9(a), Nov. 10, 1978, 92 Stat. 3633; Pub. L. 101-239, title VII, §§7721(c)(9), 7737(a), Dec. 19,

<sup>1</sup> See References in Text note below.

1989, 103 Stat. 2400, 2404; Pub. L. 104-168, title IX, §§901(a), 903(a), 904(a), July 30, 1996, 110 Stat. 1465-1467; Pub. L. 105-206, title III, §3307(a), (b), July 22, 1998, 112 Stat. 744.)

#### REFERENCES IN TEXT

The Court of Claims, referred to in subsec. (c)(2), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

#### AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-206, §3307(a), inserted “or in person” after “section 6212(b)”.

Subsec. (b)(2). Pub. L. 105-206, §3307(b)(1), inserted “(or, in the case of such a notice delivered in person, such delivery)” after “paragraph (1)”.

Subsec. (b)(3). Pub. L. 105-206, §3307(b)(2), inserted “or delivered in person” after “mailed” in introductory provisions and in subpar. (A).

1996—Subsecs. (b), (c). Pub. L. 104-168, §901(a), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (d). Pub. L. 104-168, §903(a), added subsec. (d).

Subsec. (e). Pub. L. 104-168, §904(a), added subsec. (e).

1989—Subsec. (a). Pub. L. 101-239, §7721(c)(9), inserted “or part II of subchapter A of chapter 68” after “under section 6653”.

Subsec. (b)(1). Pub. L. 101-239, §7737(a), inserted at end “Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).”

1978—Pub. L. 95-628 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title III, §3307(c), July 22, 1998, 112 Stat. 744, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 22, 1998].”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 901(b) of Pub. L. 104-168 provided that: “The amendment made by subsection (a) [amending this section] shall apply to proposed assessments made after June 30, 1996.”

Section 903(b) of Pub. L. 104-168 provided that: “The amendment made by subsection (a) [amending this section] shall apply to penalties assessed after the date of the enactment of this Act [July 30, 1996].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7721(c)(9) of Pub. L. 101-239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101-239, set out as a note under section 461 of this title.

Section 7737(b) of Pub. L. 101-239 provided that: “The amendment made by subsection (a) [amending this section and sections 6694 and 6703 of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 9(c) of Pub. L. 95-628 provided that: “The amendments made by this section [amending this section and sections 7103 and 7421 of this title] shall apply with respect to penalties assessed more than 60 days

after the date of the enactment of this Act [Nov. 10, 1978].”

#### PUBLIC INFORMATION TO ENSURE EMPLOYEE AWARENESS OF RESPONSIBILITIES AND LIABILITIES UNDER TAX DEPOSITORY SYSTEM

Section 904(b) of Pub. L. 104-168 provided that:

“(1) IN GENERAL.—The Secretary of the Treasury or the Secretary’s delegate (hereafter in this subsection referred to as the ‘Secretary’) shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

“(A) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

“(B) the development of a special information packet.

“(2) DEVELOPMENT OF EXPLANATORY MATERIALS.—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

“(3) IRS INSTRUCTIONS.—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.”

#### § 6673. Sanctions and costs awarded by courts

##### (a) Tax court proceedings

##### (1) Procedures instituted primarily for delay, etc.

Whenever it appears to the Tax Court that—

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer’s position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies,

the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of \$25,000.

##### (2) Counsel’s liability for excessive costs

Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require—

(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct, or

(B) if such attorney is appearing on behalf of the Commissioner of Internal Revenue, that the United States pay such excess costs, expenses, and attorneys’ fees in the same manner as such an award by a district court.

##### (b) Proceedings in other courts

##### (1) Claims under section 7433

Whenever it appears to the court that the taxpayer’s position in the proceedings before