

period is filed, in a government depository authorized under section 6302(c) to receive the deposit.

An overstated deposit claim includes a claim that deposits have been made when no deposits have been made in an authorized government depository. The existence or amount of an overstated deposit claim is not limited even though the amount described in subparagraph (1) of this paragraph (b) or the amount described in subparagraph (2) of this paragraph (b) exceeds the actual tax liability. For purposes of this paragraph (b), the date a return is considered to be filed is the later of the date the return is due to be filed (not including extensions) or the date the return is actually filed. Section 7502(e) applies in determining the date a deposit is made. The application of this paragraph is illustrated by the following examples.

Example 1. On the date a return is due for the taxable period ended December 31, 1982, Z files the return claiming deposits of tax in the amount of \$150 for that period. Z actually made deposits of \$75 for that period on or before the date the return was due and filed. Z's tax liability for that period is \$150. Z has made an overstated deposit claim in the amount of \$75, the excess of the amount of tax claimed on the return to have been deposited (\$150), over the amount actually deposited (\$75) for that period on or before the date the return was due and filed.

Example 2. On the date a return is due for the quarter ended December 31, 1982, X files the return claiming deposits of tax in the amount of \$200 for that period. X actually made deposits of \$100 for that period on or before the date the return was due and filed. X's tax liability for that period is \$100. X has made an overstated deposit claim of \$100, the excess of the amount of tax claimed on the return to have been deposited (\$200), over the amount actually deposited (\$100) for that period on or before the date the return was due and filed.

Example 3. The facts are the same as in example 2. For that quarter ended March 31, 1983, X files a return on the date it is due, claiming \$100 (the excess of the amount of tax claimed to have been deposited on the prior quarter's return, \$200, over X's liability for the prior quarter, \$100) as a deposit for the quarter ended March 31, 1983. X did not actually deposit any amount for the quarter ended March 31, 1983, on or before the date the return was due and filed. X made an overstated deposit claim of \$100 for the quarter ended December 31, 1982, as described in example 2. For the quarter ended March 31,

1983, X made an overstated deposit claim of \$100, the excess of the amount of tax claimed to have been deposited (\$100), over the amount actually deposited (0) for that period on or before the date the return was due and filed.

(c) *Assertion of reasonable cause.* To show that an overstated deposit claim was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that is made under the penalties of perjury. The statement must be filed with the district director for the district or the director of the service center where the return with respect to the tax is required to be filed. If the district director or the director of the service center determines that the overstated deposit claim was due to reasonable cause and was not due to willful neglect, the penalty will not be imposed. The fact that a correct amended return has been filed may in some cases be evidence that an overstated deposit claim on the original return was due to reasonable cause and not due to willful neglect, but is not determinative of that issue.

[T.D. 7925, 48 FR 55454, Dec. 13, 1983]

§ 301.6656-3 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 depositor is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

(c) *Effective date.* This section applies to deposits required to be made after July 30, 1996.

[T.D. 8725, 62 FR 39118, July 22, 1997]

§ 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