

the statement is made under the penalties of perjury.

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

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

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

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

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

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

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

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

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

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

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

§ 301.6653-1 Failure to pay tax.

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

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

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

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

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

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

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

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

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.

For regulations under section 6655, see §§ 1.6655-1 to 1.6655-3, inclusive, and § 1.6655-5, of this chapter (Income Tax Regulations).

[T.D. 7059, 35 FR 14549, Sept. 17, 1970]

§ 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