

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