

and other participants do not have reasonable cause for failure to register timely and the failure is not due to intentional disregard of the registration requirement on the part of any of the participants. The maximum penalty that may be imposed is \$10,000, for which the 8 participants are jointly and severally liable.

Q-10. How will the Internal Revenue Service determine whether a person has intentionally disregarded any of the registration requirements?

A-10. The determination of intentional disregard will be made individually for each tax shelter organizer. If one tax shelter organizer intentionally disregards the registration requirements, the \$10,000 limitation will not apply to that organizer. The limitation will apply, however, to any tax shelter organizers whose failure to register timely or whose furnishing of false or incomplete information was not due to intentional disregard.

Q-11. What is the maximum penalty that may be imposed if a tax shelter that is a substantial investment consisting of similar investments that are required to be aggregated under A-22 of §301.6171-1T is not timely registered or if false or incomplete information is filed with respect to the tax shelter?

A-11. The maximum penalty is \$10,000 as determined under A-6 of this section, with respect to any investment that is a tax shelter within the meaning of A-4 of §301.6111-1T without regard to the aggregation rules provided in A-22 of §301.6111-1T. The maximum penalty that may be imposed with respect to investments that are considered in a single tax shelter only by reason of the aggregation rules of A-22 of §301.6111-1T is \$10,000, even if more than one Form 8264 is required with respect to the aggregated investment (see A-48 of §301.6111-1T). The penalty may be imposed, however, if there is a failure with respect to any of the required forms.

PENALTY FOR FAILURE TO FURNISH A
REGISTRATION NUMBER

Q-12. What is the penalty for failure to furnish the registration number to a purchaser or other transferee of an interest in a tax shelter as required by A-52 through A-54 of §301.6111-1T?

A-12. The penalty for failure to furnish the tax shelter registration number in the form required by A-55 through A-54 of §301.6111-1T is \$100 for each failure.

PENALTY FOR FAILURE TO REPORT A
REGISTRATION NUMBER ON A RETURN

Q-13. What is the penalty for failure to include the tax shelter registration number on a return on which any deduction, loss, credit, other tax benefit, or any income attributable to a registered tax shelter is included?

A-13. The penalty for each failure by an investor to furnish the tax shelter registration number on such a return is \$50 for each tax shelter, unless the failure is due to reasonable cause.

There is a need for immediate guidance with respect to provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 6111 and 7805, Internal Revenue Code of 1954 (98 Stat. 678, 26 U.S.C. 6111; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7964, 49 FR 32725, Aug. 15, 1984; 49 FR 44461, Nov. 7, 1984]

**§ 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 \text{ persons} \times \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 ($\$50 \times 1,250$ 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 \times 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 ($\$50 \times 500$ 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