

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 × 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 × 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 × 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

payments or income items (and not aggregated). However, for purposes of determining the number of separate penalties to be imposed under this section, the District Director shall have the discretion to aggregate separate payments or income items, in whole or in part, in accordance with the rules for aggregation of such items for purposes of reporting, as described in § 301.6114-1(d).

(b) *Penalty waived.* Pursuant to the authority contained in section 6712(b) of the Code, the penalty imposed by paragraph (a) of this section may be waived, in whole or in part, if it is established to the satisfaction of the Assistant Commissioner (International), the District Director or the Director of the Internal Revenue Service Center that the taxpayer's failure to disclose the required information was not due to willful neglect. An affirmative showing of lack of willful neglect must be made in the form of a written statement that sets forth all the facts alleged to show lack of willful neglect and contains a declaration by such person that the statement is made under the penalties of perjury.

(c) *Manner of payment.* The penalty set forth in paragraph (a) of this section shall be paid in the same manner as tax upon the issuance of a notice and demand thereof.

(d) *Effective date.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extension) occurs after December 31, 1988.

[T.D. 8292, 55 FR 9441, Mar. 14, 1990]

§ 301.6721-0 Table of Contents.

In order to facilitate the use of §§ 301.6721-1 through 6724-1, this § 301.6721-0 lists the paragraph headings contained in these sections.

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§ 301.6722-1 Failure to furnish correct payee statements.

- (a) Imposition of penalty.
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 - (2) Failures subject to the penalty.
- (b) Exception for inconsequential errors or omissions.
 - (1) In general.
 - (2) Errors or omissions that are never inconsequential.
 - (3) Examples.
- (c) Higher penalty for intentional disregard of requirement to furnish timely correct payee statements.
 - (1) Application of section 6722(c).
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- (d) Definitions.
 - (1) Payee.
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