

For purposes of this section, the term “underpayment” means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(b) *Assertion of reasonable cause.* To show that the underpayment 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 it is made under the penalties of perjury. The statement must be filed with the appropriate ATF officer. If the appropriate ATF officer determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

(26 U.S.C. 6656)

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-301, 55 FR 47615, Nov. 14, 1990; T.D. ATF-353, 59 FR 2523, Jan. 18, 1994]

§ 70.100 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal revenue tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, that person shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of \$500, at the election of the appropriate ATF officer.

(26 U.S.C. 7304)

[T.D. ATF-301, 55 FR 47615, Nov. 14, 1990]

§ 70.101 Bad checks.

If any check or money order in payment of any amount receivable under Title 26 of the United States Code is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than \$500, the penalty under this section

shall be \$5 or the amount of such check, whichever is the lesser. This section shall not apply if the person establishes to the satisfaction of the appropriate ATF officer that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated and amended by T.D. ATF-301, 55 FR 47606, 47615, Nov. 14, 1990]

§ 70.102 Coordination with title 11.

(a) *Certain failures to pay tax.* No addition to the tax shall be made under section 6651 of the Internal Revenue Code for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code—

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) If such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee and

(i) The petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) The date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) *Exception for collected taxes.* Paragraph (a) of this section shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(26 U.S.C. 6658)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.103 Failure to pay tax.

Whoever fails to pay any tax imposed by Part I of Subchapter A of Chapter 51 of the Internal Revenue Code (liquor taxes) or by Chapter 52 (tobacco taxes) at the time prescribed shall, in addition to any other penalty provided in the Internal Revenue Code, be liable to