

the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid after the date prescribed for payment and on or before the first day of such month, and

(ii) The amount of tax stated in the notice and demand for purposes of section 6651(a)(3) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the first day of such month.

(e) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 of the Internal Revenue Code shall be assessed with respect to an underpayment of tax if an addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d) of the Internal Revenue Code.

(26 U.S.C. 6651)

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-301, 55 FR 47614, Nov. 14, 1990; T.D. ATF-353, 59 FR 2522, Jan. 18, 1994; T.D. ATF-450, 66 FR 29025, May 29, 2001; T.D. TTB-79, 74 FR 37424, July 28, 2009]

§ 70.97 Failure to pay tax.

(a) *Negligence*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of 5 percent of the underpayment, and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or if earlier, the date of the payment of the tax).

(2) Underpayment taken into account reduced by a portion attributable to fraud. There shall not be taken into account under paragraph (a) of this section any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under paragraph (b) of this section.

(3) *Negligence.* For purposes of paragraph (a) of this section, the term “negligence” includes any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the term “disregard” includes any careless, reckless, or intentional disregard.

(4) The provisions of paragraph (a) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(b) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax 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 portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) The provisions of paragraph (b) of this section, apply to returns the due date for which (determined without regard to extensions) is on or before December 31, 1986.

(c) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of 75 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) Determination of portion attributable to fraud. If the appropriate TTB officer establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall

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be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes is not attributable to fraud.

(3) The provisions of this paragraph (c) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(d) *Definition of underpayment.* For purposes of this section, the term *underpayment* means the amount by which such tax imposed by the Internal Revenue Code exceeds the excess of—

(1) The sum of,

(i) The amount shown as the tax by the taxpayer upon the taxpayers return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a) of the Internal Revenue Code), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus;

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(2) *The amount of rebates made.* For purposes of paragraph (d) of this section, the term *rebate* 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 paragraph (d)(1) of this section over the rebates previously made.

(e) *No delinquency penalty if fraud assessed.* If any penalty is assessed under paragraph (b) or (c) of this section (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 of the Internal Revenue Code (relating to failure to file such return or pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(f) *Failure to pay stamp tax.* Any person who willfully fails to pay any tax which is payable by stamp or willfully attempts in any manner to evade or defeat any such tax or 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.

(g) *Additional penalty.* For additional penalty for failure to pay certain liquor and tobacco taxes, see 27 CFR 70.102.

(26 U.S.C. 6653)

[T.D. ATF-6, 38 FR 32445, Nov. 26, 1973, as amended by T.D. ATF-353, 59 FR 2522, Jan. 18, 1994]

§ 70.98 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the provisions of 26 U.S.C. enforced and administered by the Bureau or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under 26 U.S.C. 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be:

(1) For penalties assessed before October 22, 1986, 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(2) For penalties assessed after October 21, 1986, on deposits of taxes required to be made before January 1, 1990, 10 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(3) For deposits of taxes required to be made after December 31, 1989.

(i) 2 percent of the amount of the underpayment if the failure is for not more than 5 days,

(ii) 5 percent of the amount of the underpayment if the failure is for more than 5 days but not more than 15 days,

(iii) 10 percent of the amount of the underpayment if the failure is for more than 15 days,

(iv) 15 percent of the amount of the underpayment if the tax is not deposited before the earlier of:

(A) The day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or

(B) The day on which notice and demand for immediate payment is given under 26 U.S.C. 6862 or the last sentence of 26 U.S.C. 6331(a).

For purposes of this section, the term "underpayment" means the amount of