

§ 301.6653-1 Failure to pay tax.

(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment, as defined in section 6653(c)(1) and paragraph (c)(1) of this section, of any income tax imposed by subtitle A of the Code, or gift tax imposed by chapter 12, subtitle B, of the Code, is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* (1) If any part of any underpayment of tax, as defined in section 6653(c) and paragraph (c) of this section, 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 underpayment.

(2) If a 50 percent addition to the tax for fraud is assessed under section 6653(b) with respect to an underpayment—

(i) The addition to the tax under section 6651, relating to failure to file a tax return, will not be assessed with respect to the same underpayment, and

(ii) In the case of the income taxes imposed by subtitle A and the gift tax imposed by chapter 12 of subtitle B, the 5 percent addition to the tax under section 6653(a), relating to negligence and intentional disregard of rules and regulations, will not be assessed with respect to the same underpayment.

(c) *Definition of underpayment—*(1) *Income, estate, gift, and chapter 41, 42, 43, and 44 taxes.* In the case of income, estate, gift, and chapter 41, 42, 43, and 44 taxes, an underpayment for purposes of section 6653 and this section is—

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

However, for purposes of paragraph (c)(1)(i) of this section, any amount of

additional tax shown on the amended return, so called, filed after the due date of the return is a deficiency.

(2) *Other taxes.* In the case of any tax other than an income, estate, gift or chapter 41, 42, 43, or 44 tax, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

(i) In the case of any tax with respect to which the taxpayer is required to file a return, the sum of (a) the amount shown as tax by the taxpayer upon his return filed in respect of such tax, but only if the return is filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, plus (b) any amount not shown on a return filed by the taxpayer which is paid in respect of such tax prior to the date prescribed for filing the return. The “amount shown as tax by the taxpayer upon his return” for the purposes of this subparagraph shall be determined without regard to any credit for an overpayment for any prior tax return period, and without regard to any adjustment made under section 6205(a), or section 6413(a), relating to special rules applicable to certain employment taxes.

(ii) In the case of any tax payable by stamp, the amount paid (on or before the date prescribed for payment) in respect of such tax.

The amounts specified in subdivisions (i) and (ii) of this subparagraph shall be reduced, for purposes of determining the amount of the underpayment, by the amount of any rebates made. For purposes of this subparagraph, the term “rebates” 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 subdivision (i) or (ii) of this subparagraph, whichever is applicable, over any rebates previously made.

(d) *No delinquency penalty if fraud assessed.* See paragraph (b)(2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671(b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in

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any manner to evade or defeat any such tax or the 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.

(f) *Joint returns.* No person filing a joint return shall be held liable for a fraud penalty except for his own personal fraudulent conduct. Thus, for the fraud penalty to apply to a taxpayer who files a joint return some part of the underpayment in such return must be due to the fraud of such taxpayer. A taxpayer shall not be subject to the fraud penalty solely by reason of the fraud of a spouse and his filing of a joint return with such spouse.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7320, 39 FR 28279, Aug. 6, 1974; 39 FR 29353, Aug. 15, 1974; T.D. 7838, 47 FR 44252, Oct. 7, 1982]

§ 301.6654-1 Failure by individual to pay estimated income tax.

For regulations under section 6654, see §§ 1.6654-1 to 1.6654-5, inclusive, of this chapter (Income Tax Regulations).

[T.D. 7282, 38 FR 19029, July 19, 1973]

§ 301.6655-1 Failure by corporation to pay estimated income tax.

(a) For regulations under section 6655, see §§ 1.6655-1 through 1.6655-7 of this chapter.

(b) *Effective/applicability date:* This section applies to taxable years beginning after September 6, 2007.

[T.D. 9347, 72 FR 44366, Aug. 7, 2007]

§ 301.6656-1 Abatement of penalty.

(a) *Exception for first time depositors of employment taxes—(1) Waiver.* The Secretary will generally waive the penalty imposed by section 6656(a) on a person's failure to deposit any employment tax under subtitle C of the Internal Revenue Code if—

(i) The failure is inadvertent;

(ii) The person meets the requirements referred to in section 7430(c)(4)(A)(ii) (relating to the net worth requirements applicable for awards of attorney's fees);

(iii) The failure occurs during the first quarter that the person is required to deposit any employment tax; and

(iv) The return of the tax is filed on or before the due date.

(2) *Inadvertent failure.* For purposes of paragraph (a)(1)(i) of this section, the Secretary will determine if a failure to deposit is inadvertent based on all the facts and circumstances.

(b) *Deposit sent to Secretary.* The Secretary may abate the penalty imposed by section 6656(a) if the first time a taxpayer is required to make a deposit, the amount required to be deposited is inadvertently sent to the Secretary rather than deposited by electronic funds transfer.

(c) *Effective/applicability date.* This section applies to deposits and payments made after December 31, 2010.

[T.D. 8725, 62 FR 39118, July 22, 1997. Redesignated by T.D. 8947, 66 FR 32542, June 15, 2001; T.D. 9507, 75 FR 75904, Dec. 7, 2010]

§ 301.6657-1 Bad checks.

(a) *In general.* Except as provided in paragraph (b) of this section, if a check or money order is tendered in the payment of any amount receivable under the Code, and such check or money order is not paid upon presentment, a penalty of one percent of the amount of the check or money order, in addition to any other penalties provided by law shall be paid by the person who tendered such check or money order. If, however, the amount of the check or money order is less than \$500, the penalty shall be \$5 or the amount of the check or money order, whichever amount is the lesser. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If payment is refused upon presentment of any check or money order and the person who tendered such check or money order establishes to the satisfaction of the district director that it was tendered in good faith with reasonable cause to believe that it would be duly paid, the penalty set forth in paragraph (a) of this section shall not apply.

§ 301.6658-1 Addition to tax in case of jeopardy.

Upon a finding by the district director that any taxpayer violated, or attempted to violate, section 6851 (relating to termination of taxable year)