

**(2) Listed transaction**

The term “listed transaction” means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

**(d) Authority to rescind penalty****(1) In general**

The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

(A) the violation is with respect to a reportable transaction other than a listed transaction, and

(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

**(2) No judicial appeal**

Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

**(3) Records**

If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner with respect to the determination, including—

(A) a statement of the facts and circumstances relating to the violation,

(B) the reasons for the rescission, and

(C) the amount of the penalty rescinded.

**(e) Penalty reported to SEC**

In the case of a person—

(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

(2) which—

(A) is required to pay a penalty under this section with respect to a listed transaction,

(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

(C) is required to pay a penalty under section 6662(h) with respect to any reportable transaction and would (but for section 6662A(e)(2)(B)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

**(f) Coordination with other penalties**

The penalty imposed by this section shall be in addition to any other penalty imposed by this title.

(Added Pub. L. 108-357, title VIII, §811(a), Oct. 22, 2004, 118 Stat. 1575; amended Pub. L. 110-172,

§11(a)(41), Dec. 29, 2007, 121 Stat. 2488; Pub. L. 111-240, title II, §2041(a), Sept. 27, 2010, 124 Stat. 2560.)

## REFERENCES IN TEXT

Sections 13 and 15(d) of the Securities Exchange Act of 1934, referred to in subsec. (e)(1), are classified to sections 78m and 78o(d), respectively, of Title 15, Commerce and Trade.

## AMENDMENTS

2010—Subsec. (b). Pub. L. 111-240 amended subsec. (b) generally. Prior to amendment, subsec. (b) specified the amount of the penalty under subsec. (a), both in general and with respect to a listed transaction, in the case of a natural person or in any other case.

2007—Subsec. (e)(2)(C). Pub. L. 110-172 substituted “section 6662A(e)(2)(B)” for “section 6662A(e)(2)(C)”. Effective Date of 2010 Amendment

Pub. L. 111-240, title II, §2041(b), Sept. 27, 2010, 124 Stat. 2560, provided that: “The amendment made by this section [amending this section] shall apply to penalties assessed after December 31, 2006.”

## EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title II, §2041(b), Sept. 27, 2010, 124 Stat. 2560, provided that: “The amendment made by this section [amending this section] shall apply to penalties assessed after December 31, 2006.”

## EFFECTIVE DATE

Pub. L. 108-357, title VIII, §811(c), Oct. 22, 2004, 118 Stat. 1577, as amended by Pub. L. 109-135, title IV, §403(w), Dec. 21, 2005, 119 Stat. 2629, provided that: “The amendments made by this section [enacting this section] shall apply to returns and statements the due date for which is after the date of the enactment of this Act [Oct. 22, 2004] and which were not filed before such date.”

## REPORT

Pub. L. 108-357, title VIII, §811(d), Oct. 22, 2004, 118 Stat. 1577, provided that: “The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

“(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.”

**§ 6708. Failure to maintain lists of advisees with respect to reportable transactions****(a) Imposition of penalty****(1) In general**

If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

**(2) Reasonable cause exception**

No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.

**(b) Penalty in addition to other penalties**

The penalty imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 98-369, div. A, title I, §142(b), July 18, 1984, 98 Stat. 682; amended Pub. L. 99-514, title XV, §1534(a), Oct. 22, 1986, 100 Stat. 2750; Pub. L. 108-357, title VIII, §§815(b)(5)(A), 817(a), Oct. 22, 2004, 118 Stat. 1583, 1584.)

#### CODIFICATION

Another section 6708 was renumbered section 6709 of this title.

#### AMENDMENTS

2004—Pub. L. 108-357, §815(b)(5)(A), substituted “advisees with respect to reportable transactions” for “investors in potentially abusive tax shelters” in section catchline.

Subsec. (a). Pub. L. 108-357, §817(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “Any person who fails to meet any requirement imposed by section 6112 shall pay a penalty of \$50 for each person with respect to whom there is such a failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection for any calendar year shall not exceed \$100,000.”

1986—Subsec. (a). Pub. L. 99-514 substituted “\$100,000” for “\$50,000”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 815(b)(5)(A) of Pub. L. 108-357 applicable to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of this title is provided after Oct. 22, 2004, see section 815(c) of Pub. L. 108-357, set out as a note under section 6111 of this title.

Pub. L. 108-357, title VIII, §817(b), Oct. 22, 2004, 118 Stat. 1584, provided that: “The amendment made by this section [amending this section] shall apply to requests made after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 1534(b) of Pub. L. 99-514 provided that: “The amendments made by this section [amending this section] shall apply to failures occurring or continuing after the date of the enactment of this Act [Oct. 22, 1986].”

#### EFFECTIVE DATE

Section applicable to any interest which is first sold to any investor after Aug. 31, 1984, see section 142(d) of Pub. L. 98-369, set out as a note under section 6112 of this title.

### § 6709. Penalties with respect to mortgage credit certificates

#### (a) Negligence

If—

- (1) any person makes a material misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate, and
- (2) such misstatement is due to the negligence of such person,

such person shall pay a penalty of \$1,000 for each mortgage credit certificate with respect to which such a misstatement was made.

#### (b) Fraud

If a misstatement described in subsection (a)(1) is due to fraud on the part of the person making such misstatement, in addition to any criminal penalty, such person shall pay a penalty of \$10,000 for each mortgage credit certificate with respect to which such a misstatement is made.

#### (c) Reports

Any person required by section 25(g) to file a report with the Secretary who fails to file the report with respect to any mortgage credit certificate at the time and in the manner required by the Secretary shall pay a penalty of \$200 for such failure unless it is shown that such failure is due to reasonable cause and not to willful neglect. In the case of any report required under the second sentence of section 25(g), the aggregate amount of the penalty imposed by the preceding sentence shall not exceed \$2,000.

#### (d) Mortgage credit certificate

The term “mortgage credit certificate” has the meaning given to such term by section 25(c).

(Added Pub. L. 98-369, div. A, title VI, §612(d)(1), July 18, 1984, 98 Stat. 912, §6708; renumbered §6709, Pub. L. 99-514, title XVIII, §1862(d)(2), Oct. 22, 1986, 100 Stat. 2884.)

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE

Section applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as a note under section 25 of this title.

### § 6710. Failure to disclose that contributions are nondeductible

#### (a) Imposition of penalty

If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of \$1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed \$10,000.

#### (b) Reasonable cause exception

No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

#### (c) \$10,000 limitation not to apply where intentional disregard

If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

- (1) the penalty under subsection (a) for the day on which such failure occurred shall be the greater of—

(A) \$1,000, or

(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

- (2) the \$10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

- (3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).