

spect to private foundation annual returns” in item 6685 and added items 6710 and 6711.

1986—Pub. L. 99-514, title VI, §667(b)(2), title XI, §§1102(d)(2)(C), 1171(b)(7)(B), title XV, §1501(d)(3), (4), title XVIII, §§1848(e)(3), 1862(d)(3), Oct. 22, 1986, 100 Stat. 2306, 2416, 2513, 2740, 2858, 2884, inserted analysis of parts comprising subchapter B, inserted heading for Part I, struck out item 6678 “Failure to furnish certain statements”, inserted “; overstatement of designated non-deductible contributions” in item 6693, substituted “regulated investment companies” for “qualified investment entities” in item 6697, struck out item 6699 “Assessable penalties relating to tax credit employee stock ownership plan”, substituted “section 6047(d)” for “section 6047(e)” in item 6704, and redesignated item 6708, relating to penalties with respect to mortgage credit certificates, as 6709.

1984—Pub. L. 98-369, div. A, title I, §§41(c)(2), 141(c)(2), title VIII, §801(d)(15)(B), July 18, 1984, 98 Stat. 556, 680, 997, added items 6686, 6706, and 6707.

Pub. L. 98-369, div. A, title VI, §612(d)(2), July 18, 1984, 98 Stat. 912, added item 6708 “Penalties with respect to mortgage credit certificates”.

Pub. L. 98-369, div. A, title I, §142(c)(2), July 18, 1984, 98 Stat. 682, added item 6708 “Failure to maintain lists of investors in potentially abusive tax shelters”.

1983—Pub. L. 98-67, title I, §104(c)(2), Aug. 5, 1983, 97 Stat. 379, added item 6705.

Pub. L. 97-424, title V, §515(b)(11)(D), Jan. 6, 1983, 96 Stat. 2182, struck out “or lubricating oil” after “certain fuels” in item 6675.

1982—Pub. L. 97-248, title II, §292(d)(2)(B), title III, §§320(b), 322(b), 324(b), 326(b), 334(c)(2), 340(b)(3), title IV, §405(c)(3), Sept. 3, 1982, 96 Stat. 574, 612, 613, 616, 617, 627, 634, 670, as amended by Pub. L. 97-448, title III, §306(c)(2)(B), Jan. 12, 1983, 96 Stat. 2406, substituted “primarily for delay, etc.” for “merely for delay.” in item 6673, substituted “returns, etc., with respect to foreign corporations or foreign partnerships” for “returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock” in item 6679, and added items 6700 to 6704.

1981—Pub. L. 97-34, title VII, §721(c), Aug. 13, 1981, 95 Stat. 341, struck out “allowances based on itemized deductions” after “withholding” in item 6682.

1980—Pub. L. 96-603, §§1(e)(3), 2(d)(2), Dec. 28, 1980, 94 Stat. 3505, 3510, substituted “returns” for “reports” in item 6685 and added item 6689.

Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, repealed Pub. L. 94-455, §2005(e)(4), and Pub. L. 95-600, §702(r)(1)(C), and the amendments made thereby, which resulted in striking out item 6698A “Failure to file information with respect to carryover basis property”, which had been added as item 6694 in 1976 and redesignated as item 6698 in 1978. Pub. L. 96-222, §§107(a)(2)(E), 201, redesignated item 6698 as 6698A, effective as if included in Pub. L. 95-600.

Pub. L. 96-222, title I, §§101(a)(7)(L)(v)(X), 107(a)(2)(E), Apr. 1, 1980, 94 Stat. 201, 223, redesignated item 6698, relating to failure to file information with respect to carry-over basis property, as 6698A and substituted “tax credit employee stock ownership plan” for “ESOP” in item 6699.

1978—Pub. L. 95-600, title VII, §701(r)(1)(C), Nov. 6, 1978, 92 Stat. 2938, which redesignated item 6694 “Failure to file information with respect to carryover basis property” as item 6698, was repealed by Pub. L. 96-223, §401(a). See section 401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 95-600, title I, §141(c)(2), title II, §211(b), title III, §362(d)(9), Nov. 6, 1978, 92 Stat. 2794, 2818, 2852, substituted “qualified investment entities” for “real estate investment trusts” in item 6697, and added item 6698 “Failure to file partnership return” and item 6699 “Assessable penalties relating to ESOP”.

1976—Pub. L. 94-455, title XX, §2005(e)(4), Oct. 4, 1976, 90 Stat. 1878, which added item 6694 “Failure to file information with respect to carryover basis property”, was repealed by Pub. L. 96-223, §401(a). See section

401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94-455, title XII, §1203(i)(3), title XVI, §1601(b)(2), title XIX, §1904(b)(10)(A)(vi)(II), (D)(ii), (E)(ii), Oct. 4, 1976, 90 Stat. 1694, 1746, 1817, struck out item 6680 “Failure to file interest equalization tax returns”, item 6681 “False equalization tax certificates” and item 6689 “Failure by certain foreign issuers and obligors to comply with United States investment equalization tax requirements” and added item 6694 “Understatement of taxpayer’s liability by income tax return preparer” and items 6695 to 6697.

1974—Pub. L. 93-406, title II, §§1016(b)(3), 1031(b)(2)(B), 1033(d), 2002(h)(4), Sept. 2, 1974, 88 Stat. 932, 946, 948, 971, substituted “6688” for “6687” as section number in item relating to assessable penalties with respect to information required to be furnished under section 7654, and added items 6690, 6692, and 6693.

1973—Pub. L. 93-17, §3(d)(3)(B), Apr. 10, 1973, 87 Stat. 17, added item 6689.

1972—Pub. L. 92-606, §1(f)(7), Oct. 31, 1972, 86 Stat. 1497, added item 6687 relating to assessable penalties with respect to information required to be furnished under section 7654.

Pub. L. 92-512, title I, §144(b)(2), Oct. 20, 1972, 86 Stat. 936, added item 6687 relating to failure to supply information with respect to place of residence.

1970—Pub. L. 91-258, title II, §207(d)(13), May 21, 1970, 84 Stat. 249, substituted “fuels” for “gasoline” in item 6675.

1969—Pub. L. 91-172, title I, §101(j)(60), Dec. 30, 1969, 83 Stat. 532, added items 6684 and 6685.

1966—Pub. L. 89-809, title I, §104(h)(4)(B), Nov. 13, 1966, 80 Stat. 1560, added item 6683.

Pub. L. 89-368, title I, §101(e)(4)(B), Mar. 15, 1966, 80 Stat. 62, added item 6682.

1965—Pub. L. 89-44, title II, §202(c)(3)(B), June 21, 1965, 79 Stat. 139, inserted “or lubricating oil” after “certain gasoline” in item 6675.

1964—Pub. L. 88-563, §6(c)(1), Sept. 2, 1964, 78 Stat. 847, added items 6680 and 6681.

1962—Pub. L. 87-834, §§7(i)(3), 19(g)(2), 20(d)(3), Oct. 16, 1962, 76 Stat. 989, 1058, 1063, added items 6677 to 6679.

1961—Pub. L. 87-397, §1(c)(2), Oct. 5, 1961, 75 Stat. 829, added item 6676.

1956—Act June 29, 1956, ch. 462, title II, §208(e)(8), 70 Stat. 397, substituted “Excessive claims with respect to the use of certain gasoline” for “Excessive claims for gasoline used on farms” in item 6675.

Act Apr. 2, 1956, ch. 160, §4(g), 70 Stat. 91, added item 6675.

§ 6671. Rules for application of assessable penalties

(a) Penalty assessed as tax

The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to “tax” imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) Person defined

The term “person”, as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(Aug. 16, 1954, ch. 736, 68A Stat. 828; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

§ 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax

(a) General rule

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in 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 equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

(b) Preliminary notice requirement

(1) In general

No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) or in person that the taxpayer shall be subject to an assessment of such penalty.

(2) Timing of notice

The mailing of the notice described in paragraph (1) (or, in the case of such a notice delivered in person, such delivery) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

(3) Statute of limitations

If a notice described in paragraph (1) with respect to any penalty is mailed or delivered in person before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

(A) the date 90 days after the date on which such notice was mailed or delivered in person, or

(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

(4) Exception for jeopardy

This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.

(c) Extension of period of collection where bond is filed

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—

(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

(B) files a claim for refund of the amount so paid, and

(C) furnishes a bond which meets the requirements of paragraph (3),

no levy or proceeding in court for the collection of the remainder of such penalty shall be

made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

(2) Suit must be brought to determine liability for penalty

If, within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims)¹ for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the 30-day period referred to in this paragraph.

(3) Bond

The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1½ times the amount of excess of the penalty assessed over the payment described in paragraph (1).

(4) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(5) Jeopardy collection

If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.

(d) Right of contribution where more than 1 person liable for penalty

If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with—

(1) an action for collection of such penalty brought by the United States, or

(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty.

(e) Exception for voluntary board members of tax-exempt organizations

No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board

¹ See References in Text note below.