

(Added Pub. L. 93-406, title II, §1033(b), Sept. 2, 1974, 88 Stat. 948.)

EFFECTIVE DATE

Section effective Sept. 2, 1974, see section 1034 of Pub. L. 93-406, set out as a note under section 6057 of this title.

§ 6693. Failure to provide reports on certain tax-favored accounts or annuities; penalties relating to designated nondeductible contributions

(a) Reports

(1) In general

If a person required to file a report under a provision referred to in paragraph (2) fails to file such report at the time and in the manner required by such provision, such person shall pay a penalty of \$50 for each failure unless it is shown that such failure is due to reasonable cause.

(2) Provisions

The provisions referred to in this paragraph are—

(A) subsections (i) and (l) of section 408 (relating to individual retirement plans),

(B) section 220(h) (relating to Archer MSAs),

(C) section 223(h) (relating to health savings accounts),

(D) section 529(d) (relating to qualified tuition programs),

(E) section 529A(d) (relating to qualified ABLE programs), and

(F) section 530(h) (relating to Coverdell education savings accounts).

This subsection shall not apply to any report which is an information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(X).

(b) Penalties relating to nondeductible contributions

(1) Overstatement of designated nondeductible contributions

Any individual who—

(A) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

(B) overstates the amount of such contributions made for such taxable year,

shall pay a penalty of \$100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause.

(2) Failure to file form

Any individual who fails to file a form required to be filed by the Secretary under section 408(o)(4) shall pay a penalty of \$50 for each such failure unless it is shown that such failure is due to reasonable cause.

(c) Penalties relating to simple retirement accounts

(1) Employer penalties

An employer who fails to provide 1 or more notices required by section 408(l)(2)(C) shall pay a penalty of \$50 for each day on which such failures continue.

(2) Trustee and issuer penalties

A trustee or issuer who fails—

(A) to provide 1 or more statements required by the last sentence of section 408(i) shall pay a penalty of \$50 for each day on which such failures continue, or

(B) to provide 1 or more summary descriptions required by section 408(l)(2)(B) shall pay a penalty of \$50 for each day on which such failures continue.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection with respect to any failure which the taxpayer shows was due to reasonable cause.

(d) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) does not apply to the assessment or collection of any penalty imposed by this section.

(Added Pub. L. 93-406, title II, §2002(f), Sept. 2, 1974, 88 Stat. 967; amended Pub. L. 96-222, title I, §101(a)(10)(H), Apr. 1, 1980, 94 Stat. 203; Pub. L. 98-369, div. A, title I, §147(b), July 18, 1984, 98 Stat. 687; Pub. L. 99-514, title XI, §1102(d)(1), (2)(A), (B), Oct. 22, 1986, 100 Stat. 2416; Pub. L. 100-647, title I, §1011(b)(4)(A), (B)(i), Nov. 10, 1988, 102 Stat. 3456, 3457; Pub. L. 104-188, title I, §§1421(b)(4)(B), 1455(d)(3), Aug. 20, 1996, 110 Stat. 1796, 1818; Pub. L. 104-191, title III, §301(g), Aug. 21, 1996, 110 Stat. 2052; Pub. L. 105-34, title II, §211(e)(2)(B), (C), 213(c), title XVI, §1601(d)(1)(C)(ii), 1602(a)(4), Aug. 5, 1997, 111 Stat. 812, 816, 1087, 1094; Pub. L. 105-277, div. J, title IV, §4006(c)(4), Oct. 21, 1998, 112 Stat. 2681-913; Pub. L. 106-554, §1(a)(7) [title II, §202(b)(2)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A-629; Pub. L. 107-16, title IV, §402(a)(4)(A), June 7, 2001, 115 Stat. 60; Pub. L. 107-22, §1(b)(2)(C), July 26, 2001, 115 Stat. 197; Pub. L. 108-173, title XII, §1201(g), Dec. 8, 2003, 117 Stat. 2479; Pub. L. 113-295, div. B, title I, §102(c), Dec. 19, 2014, 128 Stat. 4062.)

AMENDMENTS

2014—Subsec. (a)(2)(E), (F). Pub. L. 113-295 added subpar. (E) and redesignated former subpar. (E) as (F).

2003—Subsec. (a)(2)(C) to (E). Pub. L. 108-173 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

2001—Subsec. (a)(2)(C). Pub. L. 107-16 substituted “qualified tuition” for “qualified State tuition”.

Subsec. (a)(2)(D). Pub. L. 107-22 substituted “Coverdell education savings” for “education individual retirement”.

2000—Subsec. (a)(2)(B). Pub. L. 106-554 substituted “Archer MSAs” for “medical savings accounts”.

1998—Subsec. (a)(2)(C), (D). Pub. L. 105-277 substituted “section” for “Section”.

1997—Pub. L. 105-34, §211(e)(2)(C), substituted “certain tax-favored” for “individual retirement” in section catchline.

Subsec. (a). Pub. L. 105-34, §1602(a)(4), inserted concluding provisions.

Subsec. (a)(2)(C). Pub. L. 105-34, §211(e)(2)(B), added subpar. (C).

Subsec. (a)(2)(D). Pub. L. 105-34, §213(c), added subpar. (D).

Subsec. (c)(2). Pub. L. 105-34, §1601(d)(1)(C)(ii), inserted “and issuer” before “penalties” in heading and “or issuer” before “who fails” in introductory provisions.

1996—Subsec. (a). Pub. L. 104-191 inserted heading and amended text generally. Prior to amendment, text read as follows: “The person required by subsection (i) or (l) of section 408 to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by such subsection shall pay a penalty of \$50 for each failure unless it is shown that such failure is due to reasonable cause. This subsection shall not apply to any report which is information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(W).”

Pub. L. 104-188, §1455(d)(3), inserted at end “This subsection shall not apply to any report which is information return described in section 6724(d)(1)(C)(i) or a payee statement described in section 6724(d)(2)(W).”

Subsecs. (c), (d). Pub. L. 104-188, §1421(b)(4)(B), added subsec. (c) and redesignated former subsec. (c) as (d).

1988—Pub. L. 100-647, §1011(b)(4)(B)(i), substituted “penalties relating to” for “overstatement of” in section catchline.

Subsec. (b). Pub. L. 100-647, §1011(b)(4)(A), substituted “Penalties relating to” for “Overstatement of designated” in heading and amended text generally. Prior to amendment, text read as follows: “Any individual who—

“(1) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

“(2) overstates the amount of such contributions made for such taxable year, shall pay a penalty of \$100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause.”

1986—Pub. L. 99-514, §1102(d)(2)(B), inserted “; overstatement of designated nondeductible contributions” in section catchline.

Subsec. (b). Pub. L. 99-514, §1102(d)(1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99-514, §1102(d)(1), (2)(A), redesignated former subsec. (b) as (c) and substituted “this section” for “subsection (a)”.

1984—Subsec. (a). Pub. L. 98-369 substituted “\$50” for “\$10”.

1980—Subsec. (a). Pub. L. 96-222 substituted “subsection (i) or (l) of section 408 to file” for “section 408(i) to file”, and “such subsection shall pay” for “section 408(i) shall pay”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113-295, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to taxable years beginning after Dec. 31, 2003, see section 1201(k) of Pub. L. 108-173, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2001 AMENDMENTS

Amendment by Pub. L. 107-22 effective July 26, 2001, see section 1(c) of Pub. L. 107-22, set out as an Effective and Termination Dates of 2001 Amendment note under section 26 of this title.

Amendment by Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 402(h) of Pub. L. 107-16, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 211(e)(2)(B), (C) of Pub. L. 105-34 effective Jan. 1, 1998, see section 211(f) of Pub. L. 105-34, set out as a note under section 529 of this title.

Amendment by section 213(c) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 213(f) of Pub. L. 105-34, set out as a note under section 26 of this title.

Amendment by section 1601(d)(1)(C)(ii) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

Amendment by section 1602(a)(4) of Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-191 applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as a note under section 62 of this title.

Amendment by section 1421(b)(4)(B) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

Amendment by section 1455(d)(3) of Pub. L. 104-188 applicable to returns, reports, and other statements the due date for which (determined without regard to extensions) is after Dec. 31, 1996, see section 1455(e) of Pub. L. 104-188, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to failures occurring after July 18, 1984, see section 147(d)(2) of Pub. L. 98-369, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-222, title I, §101(b)(1)(F), Apr. 1, 1980, 94 Stat. 205, provided that: “The amendment made by subparagraph (I) of subsection (a)(10) [probably means subparagraph (H) of subsec. (a)(10), which amended this section] shall apply with respect to failures occurring [sic] after the date of the enactment of this Act [Apr. 1, 1980].”

EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93-406, set out as a note under section 4973 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see

section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 6694. Understatement of taxpayer's liability by tax return preparer

(a) Understatement due to unreasonable positions

(1) In general

If a tax return preparer—

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Unreasonable position

(A) In general

Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

(B) Disclosed positions

If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(C) Tax shelters and reportable transactions

If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) Reasonable cause exception

No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

(b) Understatement due to willful or reckless conduct

(1) In general

Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a conduct described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of—

(A) \$5,000, or

(B) 75 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Willful or reckless conduct

Conduct described in this paragraph is conduct by the tax return preparer which is—

(A) a willful attempt in any manner to understate the liability for tax on the return or claim, or

(B) a reckless or intentional disregard of rules or regulations.

(3) Reduction in penalty

The amount of any penalty payable by any person by reason of this subsection for any return or claim for refund shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).

(c) Extension of period of collection where preparer pays 15 percent of penalty

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) or (b) is made against any person who is a tax return preparer, such person pays an amount which is not less than 15 percent of the amount of such penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until the 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) Preparer must bring suit in district court to determine his liability for penalty

If, within 30 days after the day on which his claim for refund of any partial payment of any penalty under subsection (a) or (b) is denied (or, if earlier, within 30 days after the expiration of 6 months after the day on which he filed the claim for refund), the tax return preparer fails to begin a proceeding in the appropriate United States district court 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 applicable 30-day period referred to in this paragraph.

(3) 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.

(d) Abatement of penalty where taxpayer's liability not understated

If at any time there is a final administrative determination or a final judicial decision that there was no understatement of liability in the case of any return or claim for refund with respect to which a penalty under subsection (a) or (b) has been assessed, such assessment shall be abated, and if any portion of such penalty has been paid the amount so paid shall be refunded to the person who made such payment as an overpayment of tax without regard to any period of limitations which, but for this sub-