

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-

section, would apply to the making of such refund.

(e) Understatement of liability defined

For purposes of this section, the term “understatement of liability” means any understatement of the net amount payable with respect to any tax imposed by this title or any overstatement of the net amount creditable or refundable with respect to any such tax. Except as otherwise provided in subsection (d), the determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.

(f) Cross reference

For definition of tax return preparer, see section 7701(a)(36).

(Added Pub. L. 94-455, title XII, §1203(b)(1), Oct. 4, 1976, 90 Stat. 1689; amended Pub. L. 101-239, title VII, §§ 7732(a), 7737(a), Dec. 19, 1989, 103 Stat. 2402, 2404; Pub. L. 110-28, title VIII, §8246(a)(2)(F)(i), (b), May 25, 2007, 121 Stat. 201, 203; Pub. L. 110-343, div. C, title V, §506(a), Oct. 3, 2008, 122 Stat. 3880; Pub. L. 114-113, div. Q, title II, §210(a), Dec. 18, 2015, 129 Stat. 3085.)

CODIFICATION

Another section 6694, relating to failure to file information with respect to carryover basis property, which was added by Pub. L. 94-455, §2005(d)(2), was renumbered section 6698 by Pub. L. 95-600, renumbered section 6698A by Pub. L. 96-222, and repealed by Pub. L. 96-223.

AMENDMENTS

2015—Subsec. (b)(1)(B). Pub. L. 114-113 substituted “75 percent” for “50 percent”.

2008—Subsec. (a). Pub. L. 110-343 amended subsec. (a) generally. Prior to amendment, subsec. (a) provided penalty for understatement due to unreasonable positions.

2007—Pub. L. 110-28, §8246(a)(2)(F)(i)(I), substituted “tax return preparer” for “income tax return preparer” in section catchline.

Subsec. (a). Pub. L. 110-28, §8246(b), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “If—

“(1) any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on its merits,

“(2) any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and

“(3) such position was not disclosed as provided in section 6662(d)(2)(B)(ii) or was frivolous,

such person shall pay a penalty of \$250 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith.”

Subsec. (b). Pub. L. 110-28, §8246(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “If any part of any understatement of liability with respect to any return or claim for refund is due—

“(1) to a willful attempt in any manner to understate the liability for tax by a person who is an income tax return preparer with respect to such return or claim, or

“(2) to any reckless or intentional disregard of rules or regulations by any such person,

such person shall pay a penalty of \$1,000 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the

amount of the penalty paid by such person by reason of subsection (a).”

Subsec. (c)(1). Pub. L. 110-28, §8246(a)(2)(F)(i)(II), substituted “a tax return preparer” for “an income tax return preparer”.

Subsec. (c)(2). Pub. L. 110-28, §8246(a)(2)(F)(i)(III), substituted “the tax return preparer” for “the income tax return preparer”.

Subsec. (e). Pub. L. 110-28, §8246(a)(2)(F)(i)(IV), substituted “this title” for “subtitle A”.

Subsec. (f). Pub. L. 110-28, §8246(a)(2)(F)(i)(V), substituted “tax return preparer” for “income tax return preparer”.

1989—Subsec. (a). Pub. L. 101-239, §7732(a), substituted “Understatements due to unrealistic positions” for “Negligent or intentional disregard of rules and regulations” in heading and amended text generally. Prior to amendment, text read as follows: “If any part of any understatement of liability with respect to any return or claim for refund is due to the negligent or intentional disregard of rules and regulations by any person who is an income tax return preparer with respect to such return or claim, such person shall pay a penalty of \$100 with respect to such return or claim.”

Subsec. (b). Pub. L. 101-239, §7732(a), substituted “Willful or reckless conduct” for “Willful understatement of liability” in heading and amended text generally. Prior to amendment, text read as follows: “If any part of any understatement of liability with respect to any return or claim for refund is due to a willful attempt in any manner to understate the liability for a tax by a person who is an income tax return preparer with respect to such return or claim, such person shall pay a penalty of \$500 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).”

Subsec. (c)(1). Pub. L. 101-239, §7737(a), inserted at end “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).”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title II, §210(b), Dec. 18, 2015, 129 Stat. 3085, provided that: “The amendment made by this section [amending this section] shall apply to returns prepared for taxable years ending after the date of the enactment of this Act [Dec. 18, 2015].”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title V, §506(b), Oct. 3, 2008, 122 Stat. 3880, provided that: “The amendment made by this section [amending this section] shall apply—

“(1) in the case of a position other than a position described in subparagraph (C) of section 6694(a)(2) of the Internal Revenue Code of 1986 (as amended by this section), to returns prepared after May 25, 2007, and

“(2) in the case of a position described in such subparagraph (C), to returns prepared for taxable years ending after the date of the enactment of this Act [Oct. 3, 2008].”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-28 applicable to returns prepared after May 25, 2007, see section 8246(c) of Pub. L. 110-28, set out as a note under section 6060 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7732(b), Dec. 19, 1989, 103 Stat. 2402, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to documents prepared after December 31, 1989.”

§ 6695. Other assessable penalties with respect to the preparation of tax returns for other persons

(a) Failure to furnish copy to taxpayer

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(a) with respect to such return or claim shall pay a penalty of \$50 for such 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 on any person with respect to documents filed during any calendar year shall not exceed \$25,000.

(b) Failure to sign return

Any person who is a tax return preparer with respect to any return or claim for refund, who is required by regulations prescribed by the Secretary to sign such return or claim, and who fails to comply with such regulations with respect to such return or claim shall pay a penalty of \$50 for such 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 on any person with respect to documents filed during any calendar year shall not exceed \$25,000.

(c) Failure to furnish identifying number

Any person who is a tax return preparer with respect to any return or claim for refund and who fails to comply with section 6109(a)(4) with respect to such return or claim shall pay a penalty of \$50 for such 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 on any person with respect to documents filed during any calendar year shall not exceed \$25,000.

(d) Failure to retain copy or list

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(b) with respect to such return or claim shall pay a penalty of \$50 for each such 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 on any person with respect to any return period shall not exceed \$25,000.

(e) Failure to file correct information returns

Any person required to make a return under section 6060 who fails to comply with the requirements of such section shall pay a penalty of \$50 for—

(1) each failure to file a return as required under such section, and

(2) each failure to set forth an item in the return as required under section,

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 on any person with respect to any return period shall not exceed \$25,000.

(f) Negotiation of check

Any person who is a tax return preparer who endorses or otherwise negotiates (directly or

through an agent) any check made in respect of the taxes imposed by this title which is issued to a taxpayer (other than the tax return preparer) shall pay a penalty of \$500 with respect to each such check. The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer.

(g) Failure to be diligent in determining eligibility for certain tax benefits

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining—

(1) eligibility to file as a head of household (as defined in section 2(b)) on the return, or

(2) eligibility for, or the amount of, the credit allowable by section 24, 25A(a)(1), or 32,

shall pay a penalty of \$500 for each such failure.

(h) Adjustment for inflation

(1) In general

In the case of any failure relating to a return or claim for refund filed in a calendar year beginning after 2014, each of the dollar amounts under subsections (a), (b), (c), (d), (e), (f), and (g) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting “calendar year 2013” for “calendar year 2016” in subparagraph (A)(ii) thereof.

(2) Rounding

If any amount adjusted under subparagraph (A)—¹

(A) is not less than \$5,000 and is not a multiple of \$500, such amount shall be rounded to the next lowest multiple of \$500, and

(B) is not described in clause (i)² and is not a multiple of \$5, such amount shall be rounded to the next lowest multiple of \$5.

(Added Pub. L. 94-455, title XII, §1203(f), Oct. 4, 1976, 90 Stat. 1692; amended Pub. L. 95-600, title VII, §701(cc)(1), Nov. 6, 1978, 92 Stat. 2923; Pub. L. 98-369, div. A, title I, §179(b)(2), July 18, 1984, 98 Stat. 718; Pub. L. 99-44, §1(b), May 24, 1985, 99 Stat. 77; Pub. L. 101-239, title VII, §7733(a)-(d), Dec. 19, 1989, 103 Stat. 2402, 2403; Pub. L. 105-34, title X, §1085(a)(2), Aug. 5, 1997, 111 Stat. 956; Pub. L. 110-28, title VIII, §8246(a)(2)(G)(i), (ii), May 25, 2007, 121 Stat. 202; Pub. L. 112-41, title V, §501(a), Oct. 21, 2011, 125 Stat. 459; Pub. L. 113-295, div. B, title II, §208(c), Dec. 19, 2014, 128 Stat. 4073; Pub. L. 114-113, div. Q, title II, §207(a), Dec. 18, 2015, 129 Stat. 3082; Pub. L. 115-97, title I, §§11001(b), 11002(d)(1)(MM), Dec. 22, 2017, 131 Stat. 2058, 2060.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2017—Subsec. (g). Pub. L. 115-97, §11001(b), amended subsec. (g) generally. Prior to amendment, text read as

¹ So in original. Probably should be “paragraph (1)—”.

² So in original. Probably should be “subparagraph (A)”.