

TITLE 26 - INTERNAL REVENUE CODE

Subtitle F - Procedure and Administration

CHAPTER 68 - ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Subchapter A - Additions to the Tax and Additional Amounts

PART I - GENERAL PROVISIONS

§ 6651. Failure to file tax return or to pay tax

(a) Addition to the tax

In case of failure—

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown on tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213 (b)) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of \$100 or 100 percent of the amount required to be shown as tax on such return.

(b) Penalty imposed on net amount due

For purposes of—

(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) Limitations and special rule

(1) Additions under more than one paragraph

With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month (or fraction thereof) to which an addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence.

(2) Amounts of tax shown more than amount required to be shown

If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

(d) Increase in penalty for failure to pay tax in certain cases

(1) In general

In the case of each month (or fraction thereof) beginning after the day described in paragraph (2) of this subsection, paragraphs (2) and (3) of subsection (a) shall be applied by substituting “1 percent” for “0.5 percent” each place it appears.

(2) Description

For purposes of paragraph (1), the day described in this paragraph is the earlier of—

- (A) the day 10 days after the date on which notice is given under section 6331 (d), or
- (B) the day on which notice and demand for immediate payment is given under the last sentence of section 6331 (a).

(e) Exception for estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6654 or 6655.

(f) Increase in penalty for fraudulent failure to file

If any failure to file any return is fraudulent, paragraph (1) of subsection (a) shall be applied—

- (1) by substituting “15 percent” for “5 percent” each place it appears, and
- (2) by substituting “75 percent” for “25 percent”.

(g) Treatment of returns prepared by Secretary under section 6020 (b)

In the case of any return made by the Secretary under section 6020 (b)—

- (1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but
- (2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).

(h) Limitation on penalty on individual’s failure to pay for months during period of installment agreement

In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting “0.25” for “0.5” each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.

Stat. 22; Pub. L. 94–455, title XIX, § 1904(b)(10)(A)(v), Oct. 4, 1976, 90 Stat. 1817; Pub. L. 97–248, title III, § 318(a), (b), Sept. 3, 1982, 96 Stat. 610; Pub. L. 98–369, div. A, title IV, § 412(b)(8), July 18, 1984, 98 Stat. 792; Pub. L. 99–514, title XV, § 1502(a), (b), Oct. 22, 1986, 100 Stat. 2741; Pub. L. 100–203, title X, § 10301(b)(6), Dec. 22, 1987, 101 Stat. 1330–429; Pub. L. 101–239, title VII, § 7741(a), Dec. 19, 1989, 103 Stat. 2404; Pub. L. 104–168, title III, § 303(b)(2), title XIII, § 1301(a), July 30, 1996, 110 Stat. 1458, 1475; Pub. L. 105–206, title III, § 3303(a), July 22, 1998, 112 Stat. 742.)

Amendments

1998—Subsec. (h). Pub. L. 105–206 added subsec. (h).

1996—Subsec. (a)(3). Pub. L. 104–168, § 303(b)(2), substituted “21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)” for “10 days of the date of the notice and demand therefor”.

Subsec. (g). Pub. L. 104–168, § 1301(a), added subsec. (g).

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1987—Subsec. (e). Pub. L. 100–203 substituted “section 6654 or 6655” for “section 6154 or 6654”.

1986—Subsec. (c)(1). Pub. L. 99–514, § 1502(b), amended par. (1) generally, striking out the designation “(A)” before “With respect to”, inserting “(or fraction thereof)”, and striking out subpar. (B) which read as follows: “With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand.”

Subsecs. (d), (e). Pub. L. 99–514, § 1502(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (d). Pub. L. 98–369 in amending subsec. (d) generally, substituted in heading “estimated tax” for “declarations of estimated tax”, struck out provisions making section inapplicable to any failure to file a declaration of estimated tax required by section 6015 or to any failure to pay any estimated tax required to be paid by section 6153, and made section inapplicable to any failure to pay any estimated tax required to be paid by section 6654.

1982—Subsec. (a). Pub. L. 97–248, § 318(a), inserted provision that, in the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under par. (1) shall not be less than the lesser of \$100 or 100 percent of the amount required to be shown as tax on such return.

Subsec. (c)(1)(A). Pub. L. 97–248, § 318(b)(1), inserted provision that in any case described in last sentence of subsec. (a), the amount of the addition under par. (1) of subsec. (a) shall not be reduced under first sentence of this subpar. below the amount provided in such last sentence.

Subsec. (c)(1)(B). Pub. L. 97–248, § 318(b)(2), inserted “(determined without regard to the last sentence of such subsection)” after “paragraph (1) of subsection (a)”.

1976—Subsec. (e). Pub. L. 94–455 struck out subsec. (e) which related to certain interest equalization tax returns.

1971—Subsec. (e). Pub. L. 92–9 added subsec. (e).

1969—Subsec. (a). Pub. L. 91–172 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b). Pub. L. 91–172 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 91–172 added subsec. (c), redesignated former subsec. (c) as (d) and struck out reference to section 6016 of this title and provided that this section would not be applicable for failure to pay any estimated tax required under section 6153 or 6154 of this title.

1968—Subsec. (c). Pub. L. 90–364 struck out reference to section 6016.

Effective Date of 1998 Amendment

Pub. L. 105–206, title III, § 3303(b), July 22, 1998, 112 Stat. 742, provided that: “The amendment made by this section [amending this section] shall apply for purposes of determining additions to the tax for months beginning after December 31, 1999.”

Effective Date of 1996 Amendment

Amendment by section 303(b)(2) of Pub. L. 104–168 applicable in case of any notice and demand given after Dec. 31, 1996, see section 303(c) of Pub. L. 104–168, set out as a note under section 6601 of this title.

Section 1301(b) of Pub. L. 104–168 provided that: “The amendment made by subsection (a) [amending this section] shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act [July 30, 1996].”

Effective Date of 1989 Amendment

Section 7741(b) of Pub. L. 101–239 provided that: “The amendment made by subsection (a) [amending this section] shall apply in the case of failures to file returns the due date for which (determined without regard to extensions) is after December 31, 1989.”

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

Effective Date of 1986 Amendment

Section 1502(c) of Pub. L. 99–514 provided that:

“(1) Subsection (a).—The amendments made by subsection (a) [amending this section] shall apply—

“(A) to failures to pay which begin after December 31, 1986, and

“(B) to failures to pay which begin on or before December 31, 1986, if after December 31, 1986—

“(i) notice (or renounce) under section 6331(d) of the Internal Revenue Code of 1954 [now 1986] is given with respect to such failure, or

“(ii) notice and demand for immediate payment of the underpayment is made under the last sentence of section 6331(a) of such Code.

In the case of a failure to pay described in subparagraph (B), paragraph (2) of section 6651(d) of such Code (as added by subsection (a)) shall be applied by taking into account the first notice (or renounce) after December 31, 1986.

“(2) Subsection (b).—The amendment made by subsection (b) [amending this section] shall apply to amounts assessed after December 31, 1986, with respect to failures to pay which begin before, on, or after such date.”

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Effective Date of 1982 Amendment

Section 318(c) of Pub. L. 97–248 provided that: “The amendments made by this section [amending this section] shall apply to returns the due date for filing of which (including extensions) is after December 31, 1982.”

Effective Date of 1971 Amendment

Section 3(j)(3) of Pub. L. 92–9 provided that: “The amendments made by this subsection [amending this section and section 6680 of this title] shall apply with respect to returns required to be filed on or after the date of the enactment of this Act [Apr. 1, 1971].”

Effective Date of 1969 Amendment

Section 943(d) of Pub. L. 91–172 provided that: “The amendments made by subsections (a) [amending this section] and (c) [amending sections 3121, 5684, and 6653 of this title] shall apply with respect to returns the date prescribed by law (without regard to any extension of time) for filing of which is after December 31, 1969, and with respect to notices and demands for payment of tax made after December 31, 1969. The amendment made by subsection (b) [amending section 6656 of this title] shall apply with respect to deposits the time for making of which is after December 31, 1969.”

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

Illegal Tax Protester Designation

Pub. L. 105–206, title III, § 3707, July 22, 1998, 112 Stat. 778, provided that:

“(a) Prohibition.—The officers and employees of the Internal Revenue Service—

“(1) shall not designate taxpayers as illegal tax protesters (or any similar designation); and

“(2) in the case of any such designation made on or before the date of the enactment of this Act [July 22, 1998]—

“(A) shall remove such designation from the individual master file; and

“(B) shall disregard any such designation not located in the individual master file.

“(b) Designation of Nonfilers Allowed.—An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns.

“(c) Effective Date.—The provisions of this section shall take effect on the date of the enactment of this Act [July 22, 1998], except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999.”