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## The Tax Adviser

# Information return penalties: How to avoid or contest them

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### EXECUTIVE SUMMARY

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- Over 40 different information returns, ranging from Forms W-2, *Wage and Tax Statement*, to less well-known ones such as Form 8937, *Report of Organizational Actions Affecting Basis of Securities*, are required to be filed by the Internal Revenue Code.
- Because receiving correct and timely information returns is essential to tax compliance, the penalties imposed for failing to file correct or timely returns are severe, with higher penalties charged for taxpayers that do not promptly correct a failure to file returns or provide payee statements. There is no maximum cap on the penalties under Secs. 6721 and 6722 when the failure is intentional or willful.
- Return preparers are also potentially subject to significant penalties under Sec. 6723 for failure to comply with an information reporting requirement.
- The IRS will not impose the penalties under Secs. 6721, 6722, and 6723 if the failure to comply is due to reasonable cause and not willful neglect.
- Penalties subject to deficiency procedures can be challenged in Tax Court before they are paid. Penalties that are not subject to deficiency procedures can generally only be challenged by paying the assessed penalty in full and filing a refund suit in federal district court.
- Divisible penalties can generally be challenged by paying the penalty on one transaction and filing a refund suit in federal district court. In some cases, a taxpayer may challenge a penalty assessment administratively through the IRS and then obtain judicial review of the penalty in the Tax Court after a Collection Due Process hearing.

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Information returns are one of the most important enforcement tools the IRS has to ensure that taxpayers are reporting and paying the correct amount of tax. Today, there are over 40 information returns, all of which carry potential penalties for taxpayers who fail to file required information returns correctly and on time. Secs. 6721, 6722, and 6723 provide for penalties to be assessed when required information returns are incorrect, incomplete, filed late, or not filed at all. Penalties related to information returns are among the most significant penalties in the Internal Revenue Code.<sup>1</sup>

## What are information returns?

An information return is a form designed to give the IRS and other government agencies the "information" needed to check taxpayers' tax returns.<sup>2</sup> Information returns include forms most U.S. taxpayers are familiar with, such as Form W-2, *Wage and Tax Statement*, more obscure forms such as Form 8937, *Report of Organizational Actions Affecting Basis of Securities*, and newer forms, such as Forms 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*, and 1095-C, *Employer-Provided Health Insurance Offer and Coverage*.

### **Forms W-2 and W-3**

Form W-2 is one of the most commonly known information returns. It is used to report the wages paid to employees and the taxes withheld from them. Employees are familiar with Form W-2 because they receive it from their employer each year and use it to prepare their personal income tax returns. Employers must prepare and provide Form W-2 to each employee and must also prepare Form W-3, *Transmittal of Wage and Tax Statements*, which transmits the Forms W-2 and summarizes key information from each W-2 regarding all employees' wages, taxes, and other vital tax information to the IRS and the Social Security Administration.

### **Forms 1094-C and 1095-C**

Forms 1094-C and 1095-C are among the newest information returns. They were created to facilitate the implementation of the Patient Protection and Affordable Care Act (PPACA), P.L. 111-148. Employers with 50 or more full-time employees that are subject to the employer mandate under Sec. 4980H use Forms 1094-C and 1095-C to report the information required under the PPACA regarding offers of health coverage and enrollment in health coverage for their employees.<sup>3</sup> Form 1095-C is similar to Form W-2 in that it provides the relevant health care information offered regarding that particular employee. Form 1094-C is used to transmit Forms 1095-C to the IRS, as well as provide summary information for each employer to the Service.

### **How are information returns used?**

The IRS employs the Information Returns Program (IRP) to match information returns to individual tax returns to determine compliance.<sup>4</sup> These forms are a vital part of the self-reporting income tax system in the United States. If employers do not prepare and file Forms W-2 and W-3 as required, then employees will not have the information needed to prepare their personal income tax returns, the IRS will not have a way to check the information contained in the employees' returns against what the employer actually paid them, and the Social Security Administration will not have a way to calculate what each individual's benefits should be once those individuals reach retirement age.

Due to the vital role information returns have in the self-assessment income tax system, Congress has prescribed severe penalties for the failure to timely file correct information returns,<sup>5</sup> as well as the failure to furnish correct payee statements.<sup>6</sup> An employer who fails to prepare required information returns such as Forms W-2 and 1095-C will likely be assessed penalties for *both* the failure to file them and the failure to furnish employees with them.

### **What penalties are imposed for information return failures?**

The penalties imposed for the failure to file and furnish complete, accurate, and timely information returns are contained in Secs. 6721, 6722, and 6723.

#### **Sec. 6721: Failure to timely file correct information returns**

Sec. 6721 provides for a three-tier penalty structure for the failure to timely file correct information returns. The penalty tier is based on when, if at all, filers meet their obligations. The penalty for the late filing, incorrect filing, or an absolute failure to file information returns is:

- *Tier 1*: \$50 for each failure, up to a maximum of \$500,000 per year if the failure is corrected on or before 30 days after the information return's due date;<sup>7</sup>
- *Tier 2*: \$100 for each failure, up to a maximum of \$1,500,000 per year if the failure is corrected on or before Aug. 1 of the calendar year in which the information return was required to be filed;<sup>8</sup> and
- *Tier 3*: \$250 for each failure, up to a maximum of \$3,000,000 per year, if the required information returns are not filed in a complete and accurate manner on or before Aug. 1 of the calendar year in which the information returns are required to be filed.<sup>9</sup>

Small businesses, which are defined for purposes of this statute as having gross receipts of less than \$5 million, have lower maximum penalties.<sup>10</sup> The statute also provides a safe harbor for certain *de minimis* errors.<sup>11</sup>

Under this penalty regime, an employer that has 15,000 employees and fails to file complete and accurate Forms W-2 and W-3 by the Jan. 31 due date faces the following penalties:

- Tier 1 — forms filed on or before March 1:
  - $\$50 \times 15,000 = \$750,000$ .
  - Penalty is capped at \$500,000.
  - Penalty exposure is \$500,000.
- Tier 2 — forms not filed by March 1, but filed on or before Aug. 1:
  - $\$100 \times 15,000 = \$1,500,000$ .
  - Penalty is capped at \$1,500,000.
  - Penalty exposure is \$1,500,000.
- Tier 3 — forms not filed by Aug. 1:
  - $\$250 \times 15,000 = \$3,750,000$ .
  - Penalty is capped at \$3,000,000.
  - Penalty exposure is \$3,000,000.

An employer of more than 50 employees also is required to file PPACA health care coverage forms.<sup>12</sup> Assume the employer of 15,000 people fails to file Forms 1094-C and 1095-C for all of its employees.<sup>13</sup> The penalties for Forms 1094-C and 1095-C are calculated as follows:

- Tier 1 — forms filed on or before March 28:
  - $\$50 \times 15,000 = \$750,000$ .
  - Penalty is capped at \$500,000.
  - Penalty exposure is \$500,000.
- Tier 2 — forms not filed by March 28, but filed on or before Aug. 1:
  - $\$100 \times 15,000 = \$1,500,000$ .

- Penalty is capped at \$1,500,000.
- Penalty exposure is \$1,500,000.
- Tier 3 — forms not filed by Aug. 1:
  - $\$250 \times 15,000 = \$3,750,000$ .
  - Penalty is capped at \$3,000,000.
  - Penalty exposure is \$3,000,000.

Accordingly, an employer with 15,000 employees that fails to timely file complete and accurate Forms W-2, W-3, 1094-C, and 1095-C faces total penalties of \$1,000,000, up to a maximum of \$6,000,000 under Sec. 6721. Only one Sec. 6721 penalty can be imposed per information return, even if there are multiple errors.<sup>14</sup> But if multiple forms are filed late or with errors, a penalty can be assessed for each form. If a return contains multiple failures or errors, whichever penalty is the highest will apply.<sup>15</sup>

If the failure to file complete, accurate, and timely returns is intentional, then there is no maximum penalty. In addition, the amount of the penalty increases significantly.<sup>16</sup> The amount of the increase depends on which information returns are at issue.<sup>17</sup> For information returns such as Forms W-2, W-3, 1094-C, and 1095-C, the penalty for intentional disregard of the filing requirement is \$500 per failure, with no cap. Accordingly, an employer that has 15,000 employees and intentionally disregards the requirement to file Forms W-2, W-3, 1094-C, and 1095-C faces penalties of up to \$15,000,000, calculated as follows:

- $15,000 \times \$500 = \$7,500,000$  (failure to file Form W-2 transmitted by Form W-3).
- $15,000 \times \$500 = \$7,500,000$  (failure to file Form 1095-C transmitted by Form 1094-C).
- Total = \$15,000,000.

### **Sec. 6722: Failure to furnish correct payee statements**

Just as employers that fail to timely *file* correct information returns face a penalty, so too do employers that do not provide the necessary "payee statements" to those who are entitled to receive them. Form W-2, for example, must be furnished to employees as well as to the IRS. Employers that do not provide their employees with correct W-2s create a logistical nightmare for those employees when it comes time to file their tax returns and may contribute to significant understatements of income tax. A failure to provide information returns can also potentially raise criminal implications.<sup>18</sup> Accordingly, Congress has provided for a penalty for the failure to timely furnish complete and accurate payee statements.<sup>19</sup>

As with the penalty for the failure to file correct information returns, the penalty for the failure to furnish timely and correct payee statements is imposed on a three-tier system.<sup>20</sup> A penalty is imposed for the failure to furnish a payee with a correct statement on or before the due date to furnish the statement, as follows:

- *Tier 1*: \$50 for each failure, up to a maximum of \$500,000 per year if the failure is corrected on or before 30 days after the information return's due date;<sup>21</sup>
- *Tier 2*: \$100 for each failure, up to a maximum of \$1,500,000 per year if the failure is corrected on or before Aug. 1 of the calendar year in which the information return was required to be filed;<sup>22</sup> and
- *Tier 3*: \$250 for each failure, up to a maximum of \$3,000,000 per year, if the required information returns are not filed in a complete and accurate manner on or before Aug. 1 of the calendar year in which the information returns are required to be filed.<sup>23</sup>

As with the failure to file information returns, the failure to furnish payee statements carries an additional penalty for intentional disregard and, if there is intentional disregard, there is no cap on the penalty.<sup>24</sup>

### **Negligence or intentional disregard?**

The three-tier penalty structure in Secs. 6721 and 6722 is designed to provide an incentive for taxpayers to fix filing errors or tardiness and to do so early.<sup>25</sup> There is no similar structure in place for individual taxpayers to provide an incentive to correct errors on a Form 1040, *U.S. Individual Income Tax Return*, or corporate taxpayers on a Form 1120, *U.S. Corporation Income Tax Return*.

The unique regime for information reporting penalties is intended to ensure that when taxpayers make a mistake, it is corrected as quickly as possible. Filing information returns late or failing to make corrections can have significant trickle-down effects on many other taxpayers and on the system at large. The increased penalty for intentional disregard of the rules applicable to both the failure to file and the failure to furnish goes a long way in promoting compliance with the U.S. self-reporting tax system because taxpayers have a great economic incentive to comply.

Given the vast difference between the penalties imposed for negligence and those imposed for intentional disregard,<sup>26</sup> distinguishing between which level of penalty applies is critical. Regulations promulgated under Secs. 6721 and 6722 help define intentional disregard and provide a list of factors relevant to determining whether the rules were intentionally disregarded. The factors to consider for intentional disregard include:

- Whether the failure to file timely or the failure to include correct information is part of a pattern of conduct by the person who filed the return of repeatedly failing to file timely or repeatedly failing to include correct information;
- Whether a correction was promptly made upon discovery of the failure;
- Whether the filer corrects a failure to file or a failure to include correct information within 30 days after the date of any written request from the IRS to file or to correct; and
- Whether the amount of the information reporting penalties is less than the cost of complying with the requirement to file timely or to include correct information on an information return.<sup>27</sup>

Courts have held that intentional disregard "generally involve[s] flagrant abuses of the tax system."<sup>28</sup> There must be more than a "mere mistake of law" or an involuntary failure to meet the legal requirements.<sup>29</sup> Intentional disregard is "a high standard of culpability, requiring much more than merely negligent or reckless disregard."<sup>30</sup>

As a practical matter, the best defense a taxpayer has against an intentional disregard penalty is having a system with controls in place to ensure accurate and timely filing of all required information returns. Even if the system somehow fails, having designed and implemented the system demonstrates at the very minimum an intention to fulfill the filing requirement, not to disregard it. Each taxpayer's information reporting compliance system should be commensurate with the complexity and nature of its business.<sup>31</sup>

### **General information reporting requirement penalty**

Sec. 6723 provides: "In the case of a failure by any person to comply with a specified information reporting requirement on or before the time prescribed therefor, such person shall pay a penalty of \$50 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed \$100,000."<sup>32</sup> The penalty under Sec. 6723 may be imposed when an individual fails, for example, to provide his or her employer with a correct taxpayer identification number on Form W-4, *Employee's Withholding Allowance Certificate*, so the employer can pay over payroll tax and provide a correct Form W-2. It also could be imposed on a partnership that files a false partnership return and provides its partners with false Schedule K-1 statements.<sup>33</sup>

There is no *de minimis* exception, safe harbor, or small business reduction available for taxpayers who are assessed penalties under Sec. 6723, unlike the penalty provisions in Sec. 6721 and Sec. 6722. However, the penalty under Sec. 6723 is not as punitive as the Sec. 6721 and 6722 penalties because there is no increased penalty for intentional disregard, and the \$100,000 cap applies regardless of an intentional disregard.<sup>34</sup>

## Reasonable cause

Penalties under Secs. 6721, 6722, and 6723 will not be imposed if the failure is due to reasonable cause and not willful neglect.<sup>35</sup> To show reasonable cause, a taxpayer must prove that either (1) the failure was due to impediments beyond the filer's control, or (2) significant mitigating factors impacted the filer's ability to meet the filing requirements.<sup>36</sup> Finally, a taxpayer seeking relief from the penalty based on reasonable cause must have acted in a responsible manner both before and after the filing error or late filing occurred.<sup>37</sup>

## Procedures for assessing and contesting information return penalties

The Code contains over 150 civil penalties,<sup>38</sup> which are assessed in two ways:

- Penalties that are subject to deficiency procedures; and
- Assessable penalties.

Penalties that are subject to deficiency procedures include negligence and accuracy penalties imposed for making errors on income tax returns, substantial-understatement penalties, and civil fraud penalties.<sup>39</sup> When the IRS determines that these "deficiency" penalties are appropriate, it must issue the taxpayer a notice of deficiency.<sup>40</sup> The IRS is prohibited from assessing or collecting the penalties for 90 days, the amount of time the taxpayer has to contest the penalties by filing a petition in Tax Court.<sup>41</sup>

In general, taxpayers have the right to contest additional tax and certain penalties in Tax Court prior to paying the amounts the IRS has proposed to assess.<sup>42</sup> The Tax Court is the only "pre-payment" judicial forum available to taxpayers in most IRS disputes.<sup>43</sup> For taxpayers who timely contest penalties subject to deficiency procedures in Tax Court, payment is only required if the court makes a determination in favor of the IRS.<sup>44</sup>

Assessable penalties, on the other hand, can be assessed by the IRS once it determines that the penalty is appropriate and should be assessed.<sup>45</sup> Assessable penalties are not subject to deficiency procedures.<sup>46</sup> Most civil penalties are assessable penalties.<sup>47</sup> Information return penalties are by their own terms "assessable penalties," which means that they can be assessed by the IRS without issuing a deficiency notice and providing the taxpayer a pre-payment judicial forum to dispute the penalties.<sup>48</sup>

In this author's experience, when the IRS contacts a taxpayer regarding information reporting penalties, it almost always asserts intentional disregard penalties. Taxpayers will want to consider whether it makes sense to fight the intentional disregard penalty and negotiate down to a negligence penalty, or if it makes more sense to wait until the time for the IRS to assess the negligence penalty has expired before contesting the intentional disregard penalty.<sup>49</sup> These strategy calls should be made carefully with the taxpayer and an experienced IRS advocate.

When the IRS contacts a taxpayer regarding missing or incorrect information returns, the taxpayer should immediately determine whether the forms were filed timely and correctly. One of the most significant factors the IRS considers in determining what, if any, penalties to assess is whether a taxpayer resolves any compliance issues within 30 days of being contacted.<sup>50</sup> Taxpayers should carefully consider whether they can correct any shortfalls without conceding that there was an error in the first place if that is not immediately apparent. Put another way, if a company is contacted by the IRS regarding missing W-2s and W-3s, and the employee who was responsible for the filing during the tax year in question is no longer with the company, the taxpayer may want to consider filing correct forms with the IRS within the 30-day period, without conceding that the forms were not timely filed originally.

Generally, a taxpayer must pay the full amount of assessed penalties before filing an income tax refund suit.<sup>51</sup> The Supreme Court has recognized, however, that divisible taxes and penalties can be challenged if the penalty on one transaction is paid in full.<sup>52</sup> Information return penalties under Secs. 6721 and 6722 are divisible penalties for purposes of establishing refund suit jurisdiction.<sup>53</sup> This means that payment of the penalty associated with a single failure to file is sufficient to file a refund claim and institute a refund suit.<sup>54</sup>

It also is possible for taxpayers to contest information return penalties through the IRS Appeals process and through IRS Collection Due Process (CDP) Appeals.<sup>55</sup> If a taxpayer had not previously had an opportunity to dispute the underlying penalty in Appeals, then a CDP hearing preserves for the taxpayer an opportunity for judicial review of the underlying penalty in Tax Court without paying in full first.<sup>56</sup>

## Compliance is key

Information returns are an important IRS tool to promote compliance in a self-reporting tax system. The penalties applicable to failure to timely file correct information returns are among the harshest penalties in the Code. Taxpayers should take care to ensure they have well-thought-out and tested systems in place to ensure compliance with information return requirements.

## Footnotes

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<sup>1</sup>This article examines the civil penalties for certain domestic information return filing shortfalls and not the many civil penalties that apply to foreign information returns or any criminal penalties. For an examination of the voluminous foreign information return filing requirements, see Zimmerman, "Transnational Tax Information Reporting: A Guide for the Perplexed," 49 *The Tax Adviser* 162 (March 2018).

<sup>2</sup>According to the Internal Revenue Manual (IRM), an "Information Return" is any statement, return, form, or schedule described in Sec. 6724(d)(1) (IRM §4.10.5.6 (6/1/10)).

<sup>3</sup>Secs. 6055 and 6056; Instructions to Forms 1094-C and 1095-C.

<sup>4</sup>IRM §4.10.5.6 (6/1/10).

<sup>5</sup>Sec. 6721.

<sup>6</sup>Sec. 6722.

<sup>7</sup>Secs. 6721(a) and (b)(1). All references to Sec. 6721 are to failures associated with tax years after 2015. For amounts due for failures prior to tax year 2015, see pre-2015 Sec. 6721. In addition, these amounts are adjusted for inflation.

<sup>8</sup>Secs. 6721(a) and (b)(2).

<sup>9</sup>Sec. 6721(a).

<sup>10</sup>Sec. 6721(d). The maximum penalty for a small business for a tier 1 failure is \$175,000; a tier 2 failure is \$500,000; and a tier 3 failure is \$1,000,000.

<sup>11</sup>Sec. 6721(c). This article does not examine the safe harbor or how it applies under either Sec. 6721 or Sec. 6722. For more information on *de minimis* errors and the safe harbor, see Notice 2017-09.

<sup>12</sup>An employer with 50 employees or more first was required to file these forms in 2016 for offers of coverage in 2015 (Secs. 4980H(c)(2)(A) and 6056). The law known as the Tax Cuts and Jobs Act, P.L. 115-97, reduced the individual mandate penalties to zero effective in 2019, but for 2019, Forms 1094-C and 1095-C still are required, and penalties

still apply to failure to timely file and furnish forms correctly.

<sup>13</sup>The due date for Forms 1094-C and 1095-C is Feb. 28 if the forms are filed on paper and March 31 if the forms are e-filed. See IRM Exhibit 20.1.7-3, providing a complete list of all information returns and the due date for each; see also Notice 2018-94 (extending the due date for furnishing Form 1095-C to individuals as part of transition relief).

<sup>14</sup>IRM §20.1.7.8.3 (10/12/17).

<sup>15</sup>*Id.*

<sup>16</sup>Sec. 6721(e).

<sup>17</sup>*Id.*

<sup>18</sup>See, e.g., Sec. 7203. The purpose of this article is to examine the applicable civil penalties, but information return filers should be aware that the willful failure to supply certain information as and when required may be subject to criminal penalties.

<sup>19</sup>Sec. 6722(a).

<sup>20</sup>Secs. 6722(a)(1), (b)(1), and (b)(2).

<sup>21</sup>Sec. 6722(b)(1). All references to Sec. 6721 are to failures associated with tax years after 2015. For amounts due for failures prior to tax year 2015, see pre-2015 Sec. 6722.

<sup>22</sup>Sec. 6722(b)(2).

<sup>23</sup>Sec. 6722(a)(1).

<sup>24</sup>Sec. 6722(e). The failure-to-furnish penalty also tracks the failure-to-file penalty insofar as the penalty is reduced for businesses with gross receipts of less than \$5,000,000 and via a safe harbor for *de minimis* errors (Secs. 6722(c) and (d)).

<sup>25</sup>H.R. Rep't No. 247, 101st Cong., 1st Sess. (1989).

<sup>26</sup>*Purser Truck Sales, Inc.*, 710 F. Supp. 2d 1334, 1339 (M.D. Ga. 2008) ("In ordinary cases of failure to file the Form 8300, the penalty is [\$50] per violation. In the event of intentional disregard, however, the penalty increases by [50,000%], to \$25,000. The statute provides no middle ground between the two.")

<sup>27</sup>Regs. Secs. 301.6721-1(f)(3) and 301.6722-1(c)(1) (cross-referencing the Treasury regulations under Sec. 6721(f) for a definition of intentional disregard); see *American Vending Group, Inc.*, No. WGC-07-2277 (D. Md. 3/27/09) (no intentional disregard by a taxpayer that failed to file its first Form W-3; bookkeeper testified that she prepared the forms and put them on the owner's desk, which was "horribly messy").

<sup>28</sup>*In re Quality Medical Consultants, Inc.*, 192 B.R. 777, 786 (1995) (internal quotations omitted), *aff'd*, *Quality Medical Consultants, Inc.*, 214 B.R. 246 (M.D. Fla. 1997).

<sup>29</sup>*Id.* at 787; *Tysinger Motor Co., Inc.*, 428 F. Supp. 2d 480, 481-484 (E.D. Va. 2006) (no intentional disregard by car dealership that failed to file Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, in four of eight reportable transactions because taxpayer had a system, though flawed, designed to identify those transactions and trigger the filing of a Form 8300; intentional disregard is a voluntary, rather than mistaken, failure to comply); see also *Purser Truck Sales*, 710 F. Supp. 2d at 1339 (taxpayer must exhibit more than merely poor

recordkeeping practices or unsophisticated office procedures to merit the heightened penalty); *Scott Labor, LLC*, T.C. Memo. 2015-194 (flawed system sufficient to defeat intentional disregard penalty); *Bale Chevrolet Co.*, 620 F.3d 868, 869 (8th Cir. 2010) (intentional disregard found where taxpayer admitted to the IRS that its failure to implement an adequate compliance system led to return filing failures).

<sup>30</sup>*Purser Truck Sales*, 710 F. Supp. 2d at 1339.

<sup>31</sup>Compare *John C. Hom & Associates, Inc.*, T.C. Summ. 2015-49 (2015) (business owner with a handful of employees had a "system" of saving copies of forms filed to the hard drive of his computer; the court held there was no intentional disregard despite filing shortfalls), with *Tysinger*, 428 F. Supp. 2d at 484 (system used by business with relatively few reportable transactions was adequate to defeat intentional disregard penalty despite flaws), and *Scott Labor, LLC*, T.C. Memo. 2015-194 at \*19 (taxpayer with several thousand employees in multiple divisions arranged for his accountant and bookkeeper to meet regularly to prepare forms; failures were accidental).

<sup>32</sup>Sec. 6723.

<sup>33</sup>See, e.g., *Goulding*, 717 F. Supp. 545 (N.D. Ill. 1989).

<sup>34</sup>Compare Sec. 6723 and Secs. 6721 and 6722.

<sup>35</sup>Sec. 6724.

<sup>36</sup>Regs. Secs. 301.6724-1(a)(2)(i) and (ii).

<sup>37</sup>Regs. Sec. 301.6274-1(a); see also *Erickson*, 172 B.R. 900, 910-11 (1994) (no reasonable cause where business owner failed to provide necessary information to tax preparer).

<sup>38</sup>See, e.g., Tarr and Drucker, Bloomberg BNA Tax Management U.S. Income Portfolios 634-3d: *Civil Tax Penalties*, I.A., "The Growth of Penalties" (2012).

<sup>39</sup>See, e.g., Secs. 6662 and 6663.

<sup>40</sup>Secs. 6212 and 6665.

<sup>41</sup>Secs. 6212, 6213, and 6665.

<sup>42</sup>Sec. 6213.

<sup>43</sup>Sec. 6213; Sec. 7422 (civil actions for refund).

<sup>44</sup>Sec. 6213 (prohibiting levy or collection during the 90-day petition period and, if a petition is filed, until the Tax Court decision is final).

<sup>45</sup>Sec. 6671.

<sup>46</sup>*Id.*

<sup>47</sup>See, e.g., Secs. 6672, 6694, 6700, 6701, 6702, and 6707.

<sup>48</sup>Secs. 6671 and 6724(b).

<sup>49</sup>For missing or unfiled information returns, the statute of limitation never begins to run, and penalties may be assessed at any time (Sec. 6501(c)(3)). For late or incorrect information returns, the statute of limitation to assess information reporting penalties is three years from the date the form is filed (Sec. 6501(a)).

<sup>50</sup>Regs. Secs. 301.6721-1(f)(3)(ii) and (iii).

<sup>51</sup>*Flora*, 357 U.S. 63 (1958) ("*Flora I*"), aff'd on reh'g, 362 U.S. 145 (1960) ("*Flora II*"); *Curry*, 774 F.2d 852, 854 (7th Cir. 1985).

<sup>52</sup>*Flora II*, 362 U.S. at 176, n. 38.

<sup>53</sup>Chief Counsel Advice 201315017.

<sup>54</sup>*Id.*

<sup>55</sup>IRM §20.1.7.5.2 (10/12/17).

<sup>56</sup>*Scott Labor, LLC*, T.C. Memo. 2015-194 at \*2 (reviewing in Tax Court an IRS Appeals determination following a Collection Due Process hearing).

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