

both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section, R can demonstrate that it acted in a responsible manner only if it complies with paragraph (f) of this section. R solicited E's TIN at the time the account was opened (initial solicitation). Under paragraphs (d)(2) and (f)(4) of this section, the initial solicitation relates to failures on returns filed for the year in which an account is opened (*i.e.*, 1991) and for subsequent years until the calendar year in which the filer receives a notification of an incorrect TIN pursuant to section 3406. Because E failed to provide the correct TIN upon request, the failure arose from events beyond R's control as described in paragraph (c)(6) of this section. Therefore, the penalty with respect to the failure on the 1991 calendar year information return is waived due to reasonable cause.

Example (7). (i) The facts are the same as in *Example 6*. In April 1994 the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of §301.6721-1 that the information return filed for the 1992 calendar year for E contained an incorrect TIN.

(ii) To establish reasonable cause for the failure under this section, R must satisfy the criteria in both paragraphs (c)(6) and (d)(2) of this section. Pursuant to paragraph (d)(2) of this section R may establish that it acted in a responsible manner only by complying with paragraph (f) of this section. Pursuant to paragraph (f)(1)(ii) of this section, R must make an annual solicitation after being notified of an incorrect TIN if the payee's account contains the incorrect TIN at the time of the notification. Paragraph (f)(2) of this section provides that if the filer is notified pursuant to section 3406(a)(1)(B) the time and manner of making an annual solicitation is that required under §35a.3406-(c)(1) of this chapter. Section 35a.3406-1 (c)(1) of this chapter requires R to notify E by mail within 15 business days after the date of the notice from the Internal Revenue Service, which R failed to do. As a result, R has failed to act in a responsible manner with respect to the failure on the 1992 information return, and the penalty will not be waived due to reasonable cause.

(l) [*Reserved.*]

(m) *Procedure for seeking a waiver.* In seeking an administrative determination that the failure was due to reasonable cause and not willful neglect, the filer must submit a written statement to the district director or the director of the Internal Revenue Service Center where the returns, as defined in section 6724(d), are required to be filed. The statement must—

(1) State the specific provision under which the waiver is being requested, *i.e.*, paragraph (b) or under paragraph (c) (2) through (6),

(2) Set forth all the facts alleged as the basis for reasonable cause,

(3) Contain the signature of the person required to file the return, and

(4) Contain a declaration that it is made under penalties of perjury. See §1.6061-1 of the Income Tax Regulations for the rules on the signing of returns.

(n) *Manner of payment.* The penalty due under sections 6721 through 6723 shall be paid upon notice and demand by Internal Revenue Service, and in the same manner as a tax liability is paid.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991, and amended by T.D. 8409, 57 FR 13035, Apr. 15, 1992; T.D. 8734, 62 FR 53496, Oct. 14, 1997; T.D. 8804, 63 FR 72189, Dec. 31, 1998]

EFFECTIVE DATE NOTE: By T.D. 8734, at 62 FR 53496, Oct. 14, 1997, in §301.6724-1, paragraph (g) was revised, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effectiveness of the amendments to §301.6724-1 was delayed until Jan. 1, 2000. For the convenience of the user, the superseded text is set forth as follows:

§301.6724-1 Reasonable cause.

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(g) *Due diligence safe harbor.* A filer may establish reasonable cause with respect to a failure relating to an information reporting requirement as described in paragraph (j) of this section for any return defined in paragraph (g) of §301.6721-1 if the filer exercises due diligence as provided under section 6724(c)(1) with respect to failures described in sections 6721 through 6723 and under section 6676(b) and the Temporary Employment Tax Regulations related thereto issued under the Interest and Dividend Tax Compliance Act of 1983 (with respect to a failure to provide a correct TIN) (§35a.9999-1 of this chapter *et seq.*) as in effect on December 31, 1989 (prior to amendment or repeal of these sections by the Omnibus Budget Reconciliation Act of 1989).

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REGULATIONS APPLICABLE TO INFORMATION RETURNS AND PAYEE STATEMENTS THE DUE DATE FOR WHICH (WITHOUT REGARD TO EXTENSIONS) IS AFTER DECEMBER 31, 1986, AND BEFORE JANUARY 1, 1990

§ 301.6723-1A Failure to include correct information.

(a) *General rule.* If any person files an information return (as defined in section 6724(d)(1)) or furnishes a payee statement (as defined in section 6724(d)(2)) the due date for which, determined without regard to extensions, is after December 31, 1986, and before January 1, 1990, and such person fails to include all of the information required to be shown on such return or statement or includes incorrect information, such person will be considered to have failed to include correct information. For this purpose, information required to be shown on a return or statement is the information required by the applicable information reporting statute or by any administrative pronouncement issued thereunder (such as a regulation, revenue ruling, revenue procedure, or information reporting form). Except as otherwise provided in this section, any person who fails to include correct information shall pay \$5 for each return or statement with respect to which such failure occurs; however, the total amount imposed on any person for all such failures during any calendar year shall not exceed \$20,000. See paragraph (e) of this section regarding the higher penalties for intentional disregard of the correct information reporting requirement and for interest and dividend returns and statements.

(b) *Exception for inconsequential omissions and inaccuracies—(1) Exception.* The penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct information on an information return if the failure does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. Similarly, the penalty imposed by paragraph (a) of this section will not be assessed for any failure to include correct

information on a payee statement if the failure cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return.

(2) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. A payor files a form 1099-MISC (relating to miscellaneous income) with the Internal Revenue Service and furnishes a corresponding statement to the payee. Both the form 1099-MISC and the payee statement are complete and correct, except that the word "Street" is misspelled in the payee's address. The error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. In addition, the error cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. Therefore, the penalty imposed by paragraph (a) of this section will not be assessed.

Example 2. Assume the same facts as in *Example 1*, except that the only error on the form 1099-MISC and the payee statement is that the payee's first name, "William," is misspelled as "Willaim." The penalty imposed by paragraph (a) of this section will not be assessed, for the reasons set forth in *Example 1*.

Example 3. Assume the same facts as in *Example 1*, except that the only error on the form 1099-MISC and the payee statement is that the payee's street address, 4821 Main Street, is incorrectly reported as 8421 Main Street. The penalty imposed by paragraph (a) of this section will not be assessed with respect to the form 1099-MISC if the error does not prevent or hinder the Internal Revenue Service from processing the return or from correlating the information required to be shown on the return with the information shown on the payee's tax return. However, the penalty will be assessed with respect to the payee statement because the error can reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her tax return. See paragraph (d) of this section regarding waiver of the penalty for reasonable cause or due diligence.

(c) *Exception for corrected omissions and inaccuracies—(1) Exception.* The penalty imposed by paragraph (a) of this section generally will not be assessed for a failure to include correct information on an information return or payee statement if the person who