

Cornell Law School

CFR › Title 26 › Chapter I › Subchapter F › Part 301 › Subpart - Information and Returns ›  
Section 301.6724-1

## 26 CFR 301.6724-1 - Reasonable cause.

### § 301.6724-1 Reasonable cause.

#### (a) *Waiver of the penalty* -

(1) **General rule.** The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) **Reasonable cause defined.** The penalty is waived for reasonable cause only if the filer establishes that either -

(i) There are significant mitigating factors with respect to the failure, as described in paragraph (b) of this section; or

(ii) The failure arose from events beyond the filer's control ("impediment"), as described in paragraph (c) of this section.

Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence.

(b) **Significant mitigating factors.** In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. The mitigating factors include, but are not limited to -

**(1)** The fact that prior to the failure the filer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or

**(2)** The fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to -

**(i)** Whether the filer has incurred any penalty under §§ 301.6721-1, 301.6722-1, or 301.6723-1 in prior years for the failure (or under parallel provisions of prior law), and

**(ii)** If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

A filer may treat as a penalty not incurred any penalty under sections 6721 through 6723 that was self-assessed under section 6724(c)(3) and any penalty under section 6676(b) that was self-assessed under section 6676(d), prior to amendment or repeal by the Omnibus Budget Reconciliation Act of 1989. See paragraph (c)(5) of this section for the application of this paragraph (b) to failures attributable to the actions of a filer's agent.

**(c) Events beyond the filer's control -**

**(1) In general.** In order to establish reasonable cause under this paragraph (c) (1), the filer must satisfy paragraph (d) of this section and must show that the failure was due to events beyond the filer's control. Events which are generally considered beyond the filer's control include but are not limited to -

**(i)** The unavailability of the relevant business records (as described in paragraph (c)(2) of this section),

**(ii)** An undue economic hardship relating to filing on magnetic media (as described in paragraph (c)(3) of this section),

**(iii)** Certain actions of the Internal Revenue Service (as described in paragraph (c)(4) of this section),

**(iv)** Certain actions of an agent (as described in paragraph (c)(5) of this section), and

**(v)** Certain actions of the payee or any other person providing necessary information with respect to the return or payee statement (as described in paragraph (c)(6) of this section).

**(2) *Unavailability of the relevant business records.*** In order to establish reasonable cause under paragraph (c)(1) of this section due to the unavailability of the relevant business records, the filer's business records must have been unavailable under such conditions, in such manner, and for such period as to prevent timely compliance (ordinarily at least a 2-week period prior to the due date (with regard to extensions) of the required return or the required date (with regard to extensions) for furnishing the payee statement), and the unavailability must have been caused by a supervening event. A "supervening event" includes, but is not limited to -

- (i) A fire or other casualty that damages or impairs the filer's relevant business records or the filer's system for processing and filing such records;
- (ii) A statutory or regulatory change that has a direct impact upon data processing and that is made so close to the time that the return or payee statement is required that, for all practical purposes, the change cannot be complied with; or
- (iii) The unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for filing a return or furnishing a payee statement.

**(3) *Undue economic hardship relating to filing on magnetic media.*** In order to establish reasonable cause under paragraph (c)(1) of this section due to an undue economic hardship for filing on magnetic media, the filer must show that it failed to file on magnetic media because the filer lacked the necessary hardware. For purposes of this paragraph (c)(3), the filer will not be considered to have acted in a responsible manner under paragraph (d) of this section unless -

- (i) The filer attempted on a timely basis to contract out the magnetic media filing;
- (ii) The cost of filing on magnetic media was prohibitive as determined at least 45 days before the due date of the returns (without regard to extensions) (90 days for information returns the due date for which (without regard to extensions) is after December 31, 1989, and by or before February 28, 1991 (March 15, 1991, for Forms 1042S));
- (iii) The cost was supported by a minimum of two cost estimates from unrelated parties; and

(iv) The filer filed the returns on paper. Reasonable cause will not ordinarily be established under this paragraph (c)(3) if a filer received a reasonable cause waiver in any prior year under paragraph (c)(1) of this section due to an undue economic hardship relating to filing on magnetic media.

**(4) Actions of the Internal Revenue Service.** In order to establish reasonable cause under paragraph (c)(1) of this section due to certain actions of the Internal Revenue Service, a filer must show that the failure was due to the filer's reasonable reliance on erroneous written information from the Internal Revenue Service. Reasonable reliance means that the filer relied in good faith on the information. The filer shall not be considered to have relied in good faith if the Internal Revenue Service was not aware of all the facts when it provided the information to the filer. In order to substantiate reasonable cause under this paragraph (c)(4), the filer must provide a copy of the written information provided by the Internal Revenue Service and, if applicable, the filer's written request for the information.

**(5) Actions of agent - imputed reasonable cause.** In order to establish reasonable cause under paragraph (c)(1) of this section due to actions of an agent, the filer must show the following:

(i) The filer exercised reasonable business judgment in contracting with the agent to file timely correct returns or furnish timely correct payee statements with respect to which the failure occurred. This includes contracting with the agent and providing the proper information sufficiently in advance of the due date of the return or statement to permit timely filing of correct returns or timely furnishing of correct payee statements; and

(ii) The agent satisfied the reasonable cause criteria set forth in paragraph (b) or one of the reasonable cause criteria set forth in paragraph (c) (2) through (6) of this section.

**(6) Actions of the payee or any other person.** In order to establish reasonable cause under paragraph (c)(1) of this section due to the actions of the payee or any other person, such as a broker as defined in section 6045(c) providing information with respect to the return or payee statement, the filer must show either -

(i) That the failure resulted from the failure of the payee, or any other person required to provide information necessary for the filer to comply with the information reporting requirements ("any other person"), to provide information to the filer, or

**(ii)** That the failure resulted from incorrect information provided by the payee (or any other person) upon which information the filer relied in good faith. To substantiate reasonable cause under this paragraph (c)(6), the filer must provide documentary evidence upon request of the Internal Revenue Service showing that the failure was attributable to the payee (or any other person). See paragraph (d)(2) of this section for special rules relating to the availability of a waiver where the filer's failure relates to a taxpayer identification number (TIN), and the failure is attributable to actions of the payee described in paragraph (c)(6) (i) or (ii) of this section.

**(d) Responsible manner -**

**(1) In general.** Acting in a responsible manner means -

**(i)** That the filer exercised reasonable care, which is that standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining its filing obligations and in handling account information such as account numbers and balances, and

**(ii)** That the filer undertook significant steps to avoid or mitigate the failure, including, where applicable -

**(A)** Requesting appropriate extensions of time to file, when practicable, in order to avoid the failure,

**(B)** Attempting to prevent an impediment or a failure, if it was foreseeable,

**(C)** Acting to remove an impediment or the cause of a failure, once it occurred, and

**(D)** Rectifying the failure as promptly as possible once the impediment was removed or the failure was discovered. Ordinarily, a rectification is considered prompt if it is made within 30 days after the date the impediment is removed or the failure is discovered or on the earliest date thereafter on which a regular submission of corrections is made. Submissions will be considered regular only if made at intervals of 30 days or less. A failure may be rectified by filing or correcting the information return, furnishing or correcting the payee statement, or by providing or correcting the information to satisfy the specified information reporting requirement with respect to which the failure occurs. Paragraph (d)(ii)(D) of this section does not apply with respect to information the filer is prohibited from altering under specific information reporting rules. See § 1.6045-4(i)(5) of this chapter.

**(2) Special rule for filers seeking a waiver pursuant to paragraph (c)(6) of this section.** A filer seeking a waiver for reasonable cause pursuant to paragraph (c)(6) of this section with respect to a failure resulting from a missing or an incorrect TIN will be deemed to have acted in a responsible manner in compliance with this paragraph (d) only if the filer satisfies the requirements of paragraph (e) of this section (relating to missing TINs) or paragraph (f) of this section (relating to incorrect TINs), whichever is applicable.

**(e) Acting in a responsible manner - special rules for missing TINs -**

**(1) In general.** A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure to include a TIN or an information return resulted from the failure of the payee to provide information to the filer (*i.e.*, a missing TIN) only if the filer makes the initial and, if required, the annual solicitations described in this paragraph (e) (required solicitations). For purposes of this section, a number is treated as a “missing TIN” if the number does not contain nine digits or includes one or more alpha characters (a character or symbol other than an Arabic numeral) as one of the nine digits. A solicitation means a request by the filer for the payee to furnish a correct TIN. See paragraph (f) of this section for the rules that a filer must follow to establish that the filer acted in a responsible manner with respect to providing incorrect TINs on information returns. See paragraph (e)(1)(vi)(A) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

**(i) Initial solicitation.** An initial solicitation for a payee's correct TIN must be made at the time an account is opened. The term “account” includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)-3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (e)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before

April 22, 1991. If the account is opened in person, the initial solicitation may be made by oral or written request, such as on an account creation document. If the account is opened by mail, telephone, or other electronic means, the TIN may be requested through such communications. If the account is opened by the payee's completing and mailing an application furnished by the filer that requests the payee's TIN, the initial solicitation requirement is considered met. If a TIN is not received as a result of an initial solicitation, the filer may be required to make additional solicitations (“annual solicitations”).

**(ii) *First annual solicitation.*** Except as provided in paragraph (e)(1)(vi) of this section, a filer must undertake an annual solicitation if a TIN is not received as a result of an initial solicitation (or if the filer was not required to make an initial solicitation under paragraph (e)(1)(i) of this section and the filer has not received a payee's TIN). The first annual solicitation must be made on or before December 31 of the year in which the account is opened (for accounts opened before December) or January 31 of the following year (for accounts opened in the preceding December) (“annual solicitation period”).

**(iii) *Second annual solicitation.*** If the TIN is not received as a result of the first annual solicitation, the filer must undertake a second annual solicitation. The second annual solicitation must be made after the expiration of the annual solicitation period and on or before December 31 of the year immediately succeeding the calendar year in which the account is opened.

**(iv) *Additional requirements.*** After receiving a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

**(v) *Failures to which a solicitation relates.*** The initial and first annual solicitations relate to failures on returns filed for the year in which an account is opened. The second annual solicitation relates to failures on returns filed for the year immediately following the year in which an account is opened and for succeeding calendar years.

**(vi) *Exceptions and limitations.***

**(A)** The solicitation requirements under this paragraph (e) do not apply to the extent an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721-1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (e) will

be satisfied only if the filer complies with the manner and time period requirements of the specific information reporting provision and the provisions of this paragraph (e) to the extent applicable. Also, see section 3406(e) which provides rules on the manner and time period in which a TIN must be provided for certain accounts with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

**(B)** An annual solicitation is not required to be made for a year under this paragraph (e) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721-1 is required to be filed for the account for the year.

**(C)** If a filer fails to make one (or more) of the required solicitations under paragraphs (e)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by -

**(1)** Making two consecutive annual solicitations in subsequent years (“make-up solicitations”), and

**(2)** Satisfying paragraph (e)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (e)(1)(vi)(B) of this section applies shall be disregarded. If a filer fails to make the initial solicitation under paragraph (e)(1)(i) of this section, the make-up solicitations described in this paragraph (e)(1)(vi)(C) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures with respect to years for which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make its initial solicitation) if the second make-up solicitation is made in the following year.

**(D)** A financial institution is not required to make an annual solicitation by mail on accounts with “stop-mail” or “hold-mail” instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

**(E)** A filer is not required to make annual solicitations on accounts with respect to which the filer undertook two consecutive annual mailings by December 31, 1989, under Q/A-5 through Q/A-7B or under Q/A-56 of § 35a.9999-1 of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983, as provided under section 6676(b) (prior to its amendment by the Omnibus Budget Reconciliation Act of 1989).

**(F)** A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

**(G)** Except as provided in paragraph (e)(1)(vi) (A) and (C) of this section, no more than two annual solicitations are required under this paragraph (e) in order for a filer to establish reasonable cause.

**(2) Manner of making annual solicitations - by mail or telephone -**

**(i) By mail.** A mail solicitation must include -

**(A)** A letter informing the payee that he or she must provide his or her TIN and that he or she is subject to a \$50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

**(B)** A Form W-9 or an acceptable substitute form, as defined in § 31.3406 (h)-3 (a), (b), or (c) of this chapter, on which the payee may provide the TIN, and

**(C)** A return envelope for the payee to provide the TIN which may be, but is not required to be, postage prepaid.

**(ii) By telephone.** An annual solicitation may be made by telephone if the solicitation procedure is reasonably designed and carried out in a manner that is conducive to obtaining the TIN. An annual solicitation is made pursuant to this paragraph (e)(2)(ii) for a failure if the filer -

**(A)** Completes a call to each person with a missing TIN and speaks to an adult member of the household, or to an officer of the business or the organization,

**(B)** Requests the TIN of the payee,

**(C)** Informs the payee that he or she is subject to a \$50 penalty imposed by the Internal Revenue Service under section 6723 if he or she fails to furnish his or her TIN,

**(D)** Maintains contemporaneous records showing that the solicitation was properly made, and

**(E)** Provides such contemporaneous records to the Internal Revenue Service upon request.

**(f) Acting in a responsible manner - special rules for incorrect TINs -**

**(1) In general.** A filer that is seeking a waiver for reasonable cause under paragraph (c)(6) of this section will satisfy paragraph (d)(2) of this section with respect to establishing that a failure resulted from incorrect information provided by the payee or any other person (*i.e.*, inclusion of an incorrect TIN) on an information return only if the filer makes the initial and annual solicitations described in this paragraph (f). See paragraph (e)(1) of this section for the definition of the term “solicitation.” See paragraph (f)(5)(i) of this section for alternative solicitation requirements. See paragraph (g) of this section for the safe harbor due diligence rules. See paragraph (h) of this section for the rule applicable to failures with respect to information returns the due date for which (without regard to extensions) is after December 31, 1989, and on or before April 22, 1991.

**(i) Initial solicitation.** An initial solicitation for a payee's correct TIN must be made at the time the account is opened. The term “account” includes accounts, relationships, and other transactions. However, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to a new account if the filer has the payee's TIN and uses that TIN for all accounts of the payee. For example, see § 31.3406(h)-3(a) of this chapter. Further, a filer is not required to make an initial solicitation under this paragraph (f)(1)(i) with respect to accounts for which the filer filed an information return subject to paragraph (h) of this section. For purposes of this section, the initial solicitation requirement is deemed to have been met with respect to accounts opened after December 31, 1989, and on or before April 22, 1991. No additional solicitation is required after the filer receives the TIN unless the Internal Revenue Service or, in some cases, a broker notifies the filer that the TIN is incorrect. Following such notification the filer may be required to make an annual solicitation to obtain the correct TIN as provided in paragraph (f)(1) (ii) and (iii) of this section.

**(ii) First annual solicitation.** Except as provided in paragraph (f)(5) of this section, a filer must undertake an annual solicitation only if the payor has been notified of an incorrect TIN and such account contains the incorrect TIN at the time of the notification. The first annual solicitation must be made as required by paragraph (f) (2) or (3) of this section, whichever applies. An account contains an incorrect TIN at the time of notification if the name and number combination on the account matches the name and number combination set forth on the notice from the Internal Revenue Service or a broker. A filer may be notified of an incorrect TIN by the Internal Revenue Service or by a broker pursuant to section 3406(a)(1)(B) or by a penalty notice issued by the Internal Revenue Service pursuant to section 6721. Except as otherwise provided in this section, the annual solicitation required by this paragraph (f) must be made on or before December 31 of the year in which the filer is notified of the incorrect TIN or by January 31 of the following year if the filer is notified of an incorrect TIN in the preceding December.

**(iii) Second annual solicitation.** A filer must undertake a second annual solicitation as required by paragraph (f) (2) or (3) of this section, whichever applies, if the filer is notified in any year following the year of the notification described in paragraph (f)(1)(ii) of this section that the account of a payee contains an incorrect TIN, as described in paragraph (f)(1)(ii) of this section.

**(iv) Additional requirements.** Upon receipt of a TIN, a filer must include that TIN on any information returns the original due date of which (with regard to extensions) is after the date that the filer receives the TIN.

**(2) Manner of making annual solicitation if notified pursuant to section 6721.** A filer that has been notified of an incorrect TIN by a penalty notice or other notification pursuant to section 6721 may satisfy the solicitation requirement of this paragraph (f) either by mail, in the manner set forth in paragraph (e)(2)(i) of this section; by telephone, in the manner set forth in paragraph (e)(2)(ii) of this section; or by requesting the TIN in person.

**(3) Coordination with solicitations under section 3406(a)(1)(b).**

**(i)** A filer that has been notified of an incorrect TIN pursuant to section 3406(a)(1)(B) (except filers to which § 31.3406(d)-5(b)(4)(i)(A) of this chapter applies) will satisfy the solicitation requirement of this paragraph (f) only if it makes a solicitation in the manner and within the time period required under § 31.3406(d)-5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies.

(ii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 (except filers to which § 31.3406(d)-5(b)(4)(i)(A) of this chapter applies) is not required to make the annual solicitation of this paragraph (f) if

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(A) The filer has received an effective notice pursuant to section 3406(a)(1)(B) with respect to the same payee, either during the same calendar year or for information returns filed for the same year; and

(B) The filer makes a solicitation in the manner and within the time period required under § 31.3406(d)-5(d)(2)(i) or (g)(1)(ii) of this chapter, whichever applies, before the filer is required to make the annual solicitation of this paragraph (f).

(iii) A filer that has been notified of an incorrect TIN by a notice pursuant to section 6721 with respect to a fiduciary or nominee account to which § 31.3406(d)-5(b)(4)(i)(A) of this chapter applies is required to make the annual solicitation of this paragraph (f).

**(4) Failures to which a solicitation relates.** The initial solicitation relates to failures on returns filed for the year an account is opened and for any succeeding year that precedes the year in which the filer receives a notification of an incorrect TIN. The first and second annual solicitations relate to failures on returns filed for the year in which a notification of an incorrect TIN is received. The second solicitation also relates to failures on returns filed for succeeding calendar years.

**(5) Exceptions and limitations.**

(i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting provision under which a return, as defined in paragraph (g) of § 301.6721-1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. In that event, the requirements of this paragraph (f) will be satisfied only if the filer complies with the manner and time period requirement under the specific information reporting provisions and this paragraph (f), to the extent applicable.

(ii) An annual solicitation is not required to be made for a year under this paragraph (f) with respect to an account if no payments are made to the account for such year or if no return as defined in paragraph (g) of § 301.6721-1 is required to be filed for the account for such year.

**(iii)** If a filer fails to make one (or more) of the required solicitations under paragraph (f)(1) (i), (ii), and (iii) of this section, the filer may satisfy the requirements of this section by:

**(A)** Making two consecutive annual solicitations in subsequent years (“make-up solicitations”), and

**(B)** Satisfying paragraph (f)(1)(iv) of this section.

For example, a filer who has made none of the required solicitations may satisfy the requirements of this section by making two consecutive solicitations. In determining whether a filer has made two consecutive solicitations, years to which paragraph (f)(5)(ii) of this section applies are disregarded. If a filer fails to make the initial solicitation under paragraph (f)(1)(i) of this section, the make-up solicitations described in this paragraph (f)(5)(iii) may be made in the years in which the first and second annual solicitations are required to be made; however, the penalty will apply with respect to the year in which the filer failed to make the initial solicitation. The penalty will apply to failures in years in which a required solicitation is not made and to failures with respect to all subsequent years until the filer conducts its make-up solicitations. The penalty will not apply with respect to the year in which the first make-up solicitation is made (unless it is also the year in which the filer fails to make the initial solicitation) if the second make-up solicitation is made in the following year.

**(iv)** A financial institution is not required to make an annual solicitation by mail on accounts with “stop-mail” or “hold-mail” instructions, provided the filer furnishes the solicitation material to the payee in the same manner as it furnishes other mail.

**(v)** A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, *i.e.*, where other mailings to that address have been returned to the filer because the address was incorrect and no new address has been provided to the filer.

**(vi)** In general, except as provided in paragraph (f)(5) (i) and (iii) of this section, no more than two annual solicitations are required under this paragraph (f) in order for a filer to establish reasonable cause. However, a filer who complies with this paragraph (f) during a calendar year after receiving a notice under section 6721 and who later during the same calendar year receives a notice pursuant to section 3406 may be required to undertake additional annual mailings in such calendar year pursuant to section 3406(a)(1)(B) in order to satisfy the annual solicitation requirement in paragraph (f)(3) of this section.

**(g) *Due diligence safe harbor* -**

**(1) *In general.*** 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 if the filer exercises due diligence with respect to failures described in sections 6721 through 6723.

**(2) *Special rules relating to TINs.*** The following questions and answers provide guidance on the exercise of due diligence for an exception to a penalty under sections 6721 through 6723 for a failure to provide a correct TIN on any information return (as defined in § 301.6721-1(g)), payee statement (as defined in § 301.6722-1(d)), document (as described in § 301.6723-1(a)(4)), or the failure merely to provide a TIN as described in § 301.6723-1(a)(4)(ii).

**GENERAL RULE**

Q-1. Is a payor subject to a penalty for a failure to provide a correct TIN on an information return with respect to a reportable interest or dividend payment if the payee has certified, under penalties of perjury, that the TIN furnished to the payor is the payee's correct number, the payor provided that number on an information return, and the number is later determined not to be the payee's correct number?

A-1. A payor is not subject to a penalty for failure to provide the payee's correct TIN on an information return, if the payee has certified, under penalties of perjury, that the TIN provided to the payor was his correct number, and the payor included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

**DUE DILIGENCE DEFINED FOR ACCOUNTS OPENED AND INSTRUMENTS ACQUIRED AFTER DECEMBER 31, 1983**

Q-2. In order for a payor of a reportable interest or dividend payment (other than in a window transaction) to be considered to have exercised due diligence in furnishing the correct TIN of a payee with respect to an account opened or an instrument acquired after December 31, 1983, what actions must the payor take?

A-2. (1) In general, the payor of an account or instrument that is not a pre-1984 account nor a window transaction must use a TIN provided by the payee under penalties of perjury on information returns filed with the IRS to satisfy the due diligence requirement. Therefore, if a payor permits a payee to open an account without obtaining the payee's TIN under penalties of perjury and files an information return with the IRS with a missing or an incorrect TIN, the payor will

be liable for the \$50 penalty for the year with respect to which such information return is filed. However, in its administrative discretion, the IRS will not enforce the penalty with respect to a calendar year if the certified TIN is obtained after the account is opened and before December 31 of such year, provided that the payor exercises due diligence in processing such number, *i.e.*, the payor uses the same care in processing the TIN provided by the payee that a reasonably prudent payor would use in the course of the payor's business in handling account information such as account numbers and balances.

**(2)** Once notified by the IRS (or a broker) that a number is incorrect, a payor is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the payor has not exercised due diligence with respect to such years. A pre-existing certified TIN does not constitute an exercise of due diligence after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the actions described in § 31.3406(d)-5(d)(2)(i) of this chapter with respect to accounts receiving reportable payments described in section 3406(b)(1) and reported on information returns described in sections 6724(d)(1)(A) (i) through (iv).

Q-3. Is a payor as described in A-2 liable for the penalty if the payor obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

A-3. Yes. The payor is liable for the penalty unless the payor exercised that degree of care in processing the TIN and name and in furnishing it on the information return that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances.

#### **SPECIAL RULES**

Q-4. With respect to an instrument transferred without the assistance of a broker, is a payor liable for the penalty for filing an information return with a missing or an incorrect TIN if the payor records on its books a transfer of a readily tradable instrument in a transaction in which the payor was not a party?

A-4. Generally, a payor as described in Q-4 will be considered to have exercised due diligence with respect to a readily tradable instrument that is not part of a pre-1984 account with the payor if the payor records on its books a transfer in which the payor was not a party. This exception applies until the calendar year in which the payor receives a certified TIN from the payee.

Q-5. Is the payor described in A-4 required to solicit the TIN of a payee of an account with a missing TIN in order to be considered as having exercised due diligence in a subsequent calendar year?

A-5. There is no requirement on the payor to solicit the TIN in order to be considered to have exercised due diligence in a subsequent calendar year under the rule set forth in A-4.

Q-6. Is a payor as described in Q-4 considered to have exercised due diligence if the payee provides a TIN to the payor (whether or not certified), the payor uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

A-6. A payor as described in Q-4 who records on its books a transfer in which it was not a party is considered to have exercised due diligence under the rule set forth in A-4 where the transfer is accompanied with a TIN provided that the payor uses the same care in processing the TIN provided by a payee that a reasonably prudent payor would use in the course of the payor's business in handling account information, such as account numbers and account balances. Thus, a payor will not be liable for the penalty if the payor uses the TIN provided by the payee on information returns that it files, even if the TIN provided by the payee is later determined to be incorrect. However, a payor will not be considered as having exercised due diligence under A-4 after the IRS or a broker notifies the payor that the number is incorrect unless the payor undertakes the required additional actions described in the second paragraph of A-2.

Q-7. Is a payor liable for a penalty for filing an information return with a missing or an incorrect TIN with respect to a post-1983 account or instrument if the payor could have met the due diligence requirements but for the fact that the payor incurred an undue hardship?

A-7. A payor of a post-1983 account or instrument is not liable for a penalty under section 6721(a) for filing an information return with a missing or an incorrect TIN if the IRS determines that the payor could have satisfied the due diligence requirements but for the fact that the payor incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the destruction of records or place of business of the payor by fire or other casualty (or the place of business of the payor's agent who under a pre-existing written contract had agreed to fulfill the payor's due diligence obligations with respect to the account subject to the penalty and there was no means for the

obligations to be performed by another agent or the payor). Undue hardship will also be found to exist if the payor could have met the due diligence requirements only by incurring an extraordinary cost.

Q-8. How does a payor obtain a determination from the IRS that the payor has met the undue hardship exception to the penalty under section 6721(a) for the failure to include the correct TIN on an information return for the year with respect to which the payor is subject to the penalty?

A-8. A determination of undue hardship may be established only by submitting a written statement to the IRS signed under penalties of perjury that sets forth all the facts and circumstances that make an affirmative showing that the payor could have satisfied the due diligence requirements but for the occurrence of an undue hardship. Thus, the statement must describe the undue hardship and make an affirmative showing that the payor either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A payor may request an undue hardship determination from the district director or the director of the Internal Revenue Service Center where the payor is required to remit the penalty under section 6721(a).

Q-9. Is a pre-1984 account or instrument of a payor that is exchanged for an account or instrument of another payor as a result of a merger of the other payor or acquisition of the accounts or instruments of such payor transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

A-9. No. A pre-1984 account or instrument that is exchanged for another account or instrument pursuant to a statutory merger or the acquisition of accounts or instruments is not transformed into a post-1983 account or instrument because the exchange occurs without the participation of the payee.

Q-10. May the acquiring taxpayer described in A-9 rely upon the business records and past procedures of the merged payor or the payor whose accounts or instruments were acquired in order to establish that due diligence has been exercised on the acquired pre-1984 and post-1983 accounts or instruments?

A-10. Yes. The acquiring payor may rely upon the business records and past procedures of the merged payor or of the payor whose accounts or instruments were acquired in order to establish due diligence to avoid the penalty under section 6721(a) with respect to information returns that have been or will be filed.

Q-11. To what extent may a payor rely on the due diligence rules set forth in §§ 35a.9999-1, 35a.9999-2, and 35a.9999-3 of this chapter in effect prior to January 1, 2001 (see §§ 35a.9999-1, 35a.9999-2, and 35a.9999-3 as contained in 26 CFR part 35a, revised April 1, 1999).

A-11. A payor may rely on the due diligence rules set forth in §§ 35a.9999-1, 35a.9999-2, and 35a.9999-3 of this chapter in effect prior to January 1, 2001 (see §§ 35a.9999-1, 35a.9999-2, and 35a.9999-3 as contained in 26 CFR part 35a, revised April 1, 1999) solely for the definitions of terms or phrases used in this paragraph (g)(2).

**(3) Effective dates.** This paragraph (g) is effective for information returns (as defined in section 6724(d)(1)) required to be filed, payee statements (as defined in section 6724(d)(2)) required to be furnished, and specified information (as described in section 6724(d)(3)) required to be reported after December 31, 2000. See § 301.6724-1(g) in effect prior to January 1, 2001 (see § 301.6724-1(g) as contained in 26 CFR part 301, revised April 1, 1999) for substantially similar rules applicable prior to January 1, 2001.

**(h) Transitional rules for information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991 -**

**(1) In general.** With respect to information returns required to be filed (or payee statements required to be furnished) after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, a filer will be deemed to have satisfied reasonable cause if, with respect to the failure, the filer would have satisfied reasonable cause under sections 6721, 6722, or 6723 (prior to their amendment by the Omnibus Budget Reconciliation Act of 1989) and the regulations thereunder.

**(2) Special rule on TINs.** With respect to information returns required to be filed after December 31, 1989 (without regard to extensions), and on or before April 22, 1991, which contain a missing or an incorrect TIN, a filer will be deemed to have satisfied reasonable cause if, at the time the account was opened, the filer -

**(i)** Exercised due diligence or fulfilled the requirements of Q/A-56 of § 35a.9999-1 of this chapter, as in effect on December 31, 1989, as provided under section 6676(b) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989),

(ii) Requested the TIN according to the regulations under the section requiring the filing of the information return, but if none, under section 6109, or

(iii) Would have satisfied reasonable cause under section 6676(a) (prior to its repeal by the Omnibus Budget Reconciliation Act of 1989).

(i) [Reserved]

(j) **Failures to which this section relates.** For purposes of this section, a failure relating to an information reporting requirement means -

(1) A failure described under § 301.6721-1(a)(2) relating to the failure to file timely correct information returns as defined in section 6724(d)(1),

(2) A failure described under § 301.6722-1(a)(2) relating to the failure to furnish timely a correct payee statement as defined in section 6724(d)(2), and

(3) A failure described under § 301.6723-1(a)(2) relating to the failure to timely comply with and to include correct specified information as defined in section 6724(d)(3).

(k) **Examples.** The provisions of this section may be illustrated by the following examples:

**EXAMPLE 1.**

(i) On August 1, 1991, Individual A, an independent contractor, establishes a relationship (“an account”) with Institution L, which pays A amounts reportable under section 6041. When A opens the account L requests that A supply his TIN on the account creation document. A fails to provide his TIN. On October 1, 1991, L mails a solicitation for A's TIN that satisfies the requirement of paragraph (e)(1)(ii) of this section. A does not provide a TIN to L during 1991. L timely files an information return subject to section 6721, that does not contain A's TIN, for payments made during the 1991 calendar year with respect to A's account. A penalty is imposed on L pursuant to paragraph (a)(2) of § 301.6721-1 for L's failure to file a correct information return because A's TIN was not shown on the return. The penalty will be waived, however, if L establishes that the failure was due to reasonable cause as defined in this section.

(ii) To establish reasonable cause under this section, L must satisfy both paragraphs (c)(6) and (d) of this section. The criteria for obtaining a waiver under these paragraphs are as follows:

(A) L acted in a responsible manner in attempting to satisfy the information reporting requirement as described in paragraph (d) of this section, and

(B) L demonstrates that the failure arose from events beyond L's control,

as described in paragraph (c)(6) of this section.

**(iii)** Pursuant to paragraph (d)(2) of this section, L may demonstrate that it acted in a responsible manner only by complying with paragraph (e) of this section. Paragraph (e) of this section requires a filer to request a TIN at the time the account is opened (the initial solicitation) and, if the filer does not receive the TIN at that time, to solicit the TIN on or before December 31 of the year the account is opened (for accounts opened before December) or January 31 of the following year (for accounts in the preceding December) (the annual solicitation). Because L has performed these solicitations within the time and in the manner prescribed by paragraph (e) of this section, L has acted in a responsible manner as described in paragraph (d) of this section. L satisfies paragraph (c)(6) of this section because under the facts, L can show that the failure was caused by A's failure to provide a TIN, an event beyond L's control. As a result, L has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721-1 for the failure on the 1991 information return is waived. See section 3406(a)(1)(A) which requires L to impose backup withholding on reportable payments to A if L has not received A's TIN.

**EXAMPLE 2.**

**(i)** On August 1, 1991, Individual B opens an account with Bank M, which pays B interest reportable under section 6049. When B opens the account, M requests that B supply his TIN on the account creation document. B provides his TIN to M. On February 28, 1992, M includes the TIM that B provided on the Form 1099-INT for the 1991 calendar year. In October 1992 the Internal Revenue Service, pursuant to section 3406(a)(1)(B), notifies M that the 1991 return filed for B contains an incorrect TIN. In April 1993 a penalty is imposed on M pursuant to paragraph (a)(2) of § 301.6721-1 for M's failure to file a correct information return for the 1991 calendar year, *i.e.*, the return did not contain B's correct TIN. The penalty will be waived, however, if M establishes that the failure was due to reasonable cause as defined in this section.

**(ii)** To establish reasonable cause under this section, M must satisfy the criteria in both paragraphs (c)(6) and (d) of this section. Pursuant to paragraph (d)(2) of this section, M can demonstrate that it acted in a responsible manner only if M complies with paragraph (f) of this section. Paragraph (f) of this section requires a filer to request a TIN at the time the account is opened, an initial solicitation. Under paragraph (f)(4) of this section the initial solicitation relates to failures on returns filed for the year an account is opened. Because M performed the initial solicitation in 1991 in the time and manner prescribed in paragraph (f)(1)(i) of this section and

reflected the TIN received from B on the 1991 return as required by paragraph (f)(1)(iv) of this section, M has acted in a responsible manner as described in paragraph (d) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide a correct TIN, an event beyond M's control. As a result, M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721-1 for the failure on the 1991 information return is waived. See section 3406(a)(1)(B) which requires M to impose backup withholding on reportable payments to B if M has not received B's correct TIN.

**EXAMPLE 3.****(i) Table.**

1991	2/92	10/92	2/93
Account opened (solicits TIN)	1991 return	B-notice w/respect to 1991 return	1992 return filed.
4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return	B-notice w/respect to 1992 return	1993 return filed	6721 penalty notice for 1992 return.

**(ii)** The facts are the same as in *Example 2*. Under § 31.3406(d)-5(d)(2)(i) of this chapter and paragraph (f)(3) of this section, within 15 days of the October 1992 notification of the incorrect TIN from the Internal Revenue Service, M solicits the correct TIN from B. B fails to respond. M timely files the return for 1992 with respect to the account setting forth B's incorrect TIN. In October 1993 the Internal Revenue Service notifies M pursuant to section 3406(a)(1)(B) that the 1992 return contains an incorrect TIN. In April 1994, a penalty is imposed on M pursuant to paragraph (a)(1)(2) of § 301.6721-1 for M's failure to include B's correct TIN on the return for 1992. The penalty will be waived, if M establishes that the failure was due to reasonable cause as defined in this section.

**(iii)** M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. M may demonstrate that it acted in a responsible manner as required under paragraph (d) of this section only by complying with paragraph (f) of this section. Paragraph (f) of this section requires a filer to make an initial solicitation for a TIN when an account is opened. Further, a filer must make an annual solicitation for a TIN by mail within 15 business days after the date that the Internal Revenue Service notifies the filer of an incorrect TIN pursuant to section 3406(a)(1)(B). M made the initial

solicitation for the TIN in 1991 and, after being notified of the incorrect TIN in October 1992, the first annual solicitation within the time and manner prescribed by section 31.3406(d)-5(d)(2)(i) of this chapter and paragraph (f)(1)(ii) and (2) of this section. M acted in a responsible manner. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. As a result M has established reasonable cause under paragraph (a)(2) of this section. Therefore, the penalty imposed under paragraph (a)(2) of § 301.6721-1 for the failure on the 1992 return is waived due to reasonable cause.

**EXAMPLE 4.****(i) Table.**

1991	2/92	10/92	2/93
Account opened (solicits TIN)	1991 return filed	B-notice w/respect to 1991 return	1992 return filed.
4/93	10/93	2/94	4/94
6721 penalty notice for 1991 return	B-notice w/respect to 1992 return	1993 return filed	6721 penalty notice for 1992 return.

**(ii)** The facts are the same as in **Example 3**. M timely solicits B's TIN in October 1993, which B fails to provide. M files the return for 1993 with the incorrect TIN. In April 1995 the Internal Revenue Service informs M that the 1993 return contains an incorrect TIN. M does not solicit a TIN from B in 1994 and files a return for 1994 with B's incorrect TIN. M seeks a waiver of the penalty under paragraph (a)(2) of § 301.6721-1 for reasonable cause. M must satisfy the reasonable cause criteria in paragraphs (c)(6) and (d) of this section. Because M made the initial and two annual solicitations as required by paragraph (f) of this section, M has demonstrated that it acted in a responsible manner and is not required to solicit B's TIN in 1994. See paragraph (f)(5)(iv) of this section. M satisfies paragraph (c)(6) of this section because, under the facts, M can show that the failure was caused by B's failure to provide his correct TIN, an event beyond M's control. Therefore, M has established reasonable cause under paragraph (a)(2) of this section.

**EXAMPLE 5.**

In 1992, Mortgage Finance Company N lends money to C to purchase property in a transaction subject to reporting under section 6050H and to section 6721. As part of the transaction, C gives N a promissory note providing for repayment of principal and the

payment of interest. At the time C incurs the obligation N requests C's TIN, as required under § 1.6050H-2(f) of this chapter. C fails to provide the TIN as required by § 1.6050H-2(f) of this chapter. N sends solicitations by mail in 1992 and 1993 for the missing TIN, which C fails to provide. However, for 1994 M fails to send the solicitation required by § 1.6050H-2(f) of this chapter. N files returns for the 1992, 1993, and 1994 calendar years pursuant to section 6050H without C's TIN. Although N made the initial and the first annual solicitations in 1992 and the second annual solicitation in 1993, N did not solicit the TIN in 1994 as required under section 6050H, which requires continued annual solicitations until the TIN is obtained. Therefore, under paragraph (e)(1)(vi)(A) of this section the penalty imposed under paragraph (a) of § 301.6721-1 for the 1994 information return is not waived.

**EXAMPLE 6.****(i) Table.**

10/91	2/92	10/92	2/93
Account opened. (solicits TIN)	1991 return filed	B-notice w/respect to 1991 return	1992 return filed.
4/93	10/93	02/94	4/94
6721 penalty notice	B-notice w/respect to 1992 return	1993 return filed	6721 penalty notice for 1992 return.

**(ii)** On October 1, 1991, Individual E opens an account with Institution R, which pays E amounts reportable under section 6049. When E opens the account, R requests that E supply his TIN on an account creation document, which E does. Pursuant to paragraph (f)(1)(iv) of this section, R uses the TIN furnished by E on the information return filed for the 1991 calendar year. In October 1992 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 1991 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 1992, R telephones E pursuant to paragraphs (f)(2) and (e)(2)(ii) of this section and receives different TIN information from E. R uses this information on the return that it files timely for E for the 1992 calendar year, *i.e.*, in February 1993.

**(iii)** In April 1993, the Internal Revenue Service notifies R pursuant to paragraph (a)(2) of § 301.6721-1 that the information return filed for the 1991 calendar year contains an incorrect TIN. The penalty will be waived, however, if R establishes the failure was due to reasonable cause as defined in this section.

**(iv)** To establish reasonable cause 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 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)(3) 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 § 31.3406(d)-5(g)(1)(ii) of this chapter. Section 31.3406(d)-5(g)(1)(ii) 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; T.D. 8856, 64 FR 73413, Dec. 30, 1999; T.D. 9055, 68 FR 22595, Apr. 29, 2003; T.D. 9136, 69 FR 41943, July 13, 2004; [T.D. 9699, 79 FR 63812, Oct. 27, 2014]

**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**



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