

TITLE 26--INTERNAL REVENUE

CHAPTER I--INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY
(CONTINUED)

Additions to the Tax and Additional Amounts--Table of Contents

Sec. 301.**6707-1T** Questions and answers relating to penalties for failure to furnish information regarding tax shelters.

The following questions and answers relate to the penalties imposed by section **6707** of the Internal Revenue Code of 1954, as added by section 141(b) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 681), for failure to furnish information regarding tax shelters.

Penalties for Failure To Register and for Providing False or Incomplete Information

Q-1. What are the consequences if a person required to register a tax shelter ('`tax shelter organizer'') fails to register the shelter timely?

A-1. Generally, a penalty will be imposed. The penalty for failure to register timely is the greater of (i) \$500 or (ii) 1 percent of the aggregate amount invested in the tax shelter, not to exceed \$10,000. The \$10,000 limitation does not apply, however, if the tax shelter organizer intentionally disregards the registration requirements. For purposes of this penalty, the aggregate amount invested in the tax shelter is computed in the manner prescribed in A-21 of Sec. 301.6111-**1T**, except that the amount to be received from the sale of an interest is taken into account to determine the amount of the penalty only if the interest is sold to an investor. No penalty will be imposed on a person for failure to register a tax shelter if the failure is due to reasonable cause. See A-4 through A-6 of this section for rules relating to reasonable cause.

Q-2. Will registration of a tax shelter by a person participating in the management ('`manager'') or a person participating in the sale ('`seller'') of a tax shelter after the date that interests in the tax shelter were first offered for sale relieve a person principally responsible for organizing the tax shelter ('`principal organizer'') or a person who participated in the organization of the tax shelter of liability for failure to register?

A-2. No. A principal organizer of a tax shelter and a person who participates in the organization of a tax shelter are subject to penalty if they fail to register a tax shelter by the day interests in the tax shelter are first offered for sale, regardless of whether a seller or manager subsequently registers the tax shelter.

Q-3. Does registration of a tax shelter by a seller or manager relieve other sellers or managers who are required to register the tax shelter from liability for failure to register?

A-3. No. Sellers and managers who are required to register a tax shelter and fail to do so are subject to the penalty unless their failure to register is due to reasonable cause. A seller or manager, however, is not required to register a tax shelter once the seller or manager knows the tax shelter has been registered. See A-6 of this section for rules relating to reasonable cause for failure to register in the case of a seller.

Q-4. What constitutes reasonable cause for failure to register a tax shelter?

A-4. In general, the determination of whether reasonable cause

exists for failure to register a tax shelter is a question of fact. In determining whether reasonable cause exists, all representations known to the tax shelter organizer (or for which there is reason for the tax shelter organizer to have known) must be taken into account. A tax shelter organizer (other than a seller) ordinarily will be deemed to know

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of all representations (including those made by sellers) that the tax shelter organizer would have discovered through inquiry that a reasonable person acting in the tax shelter organizer's capacity could have undertaken. Thus, for example, a principal organizer generally will be obligated to make a more thorough inquiry than a person who merely participated in the management of a tax shelter.

Q-5. Will a tax shelter organizer who is required to register a tax shelter before October 1, 1984, have reasonable cause for failure timely to register the tax shelter, if the tax shelter organizer registers the tax shelter after the day on which the first offering for sale of interests occurs, but before October 1, 1984?

A-5. Yes. A person who is required to register a tax shelter before October 1, 1984 (i.e., a tax shelter in which the first offering for sale of an interest occurred before September 1, 1984, but in which interests will be sold after August 31, 1984, or a tax shelter in which the first offering for sale of an interest occurs after August 31, 1984, and before October 1, 1984), will have reasonable cause for the failure to register timely if the person registers the tax shelter on or before September 30, 1984.

Q-6. What constitutes reasonable cause for failure to register a tax shelter in the case of a seller of interests in the tax shelter?

A-6. Reasonable cause for failure to register a tax shelter will generally exist with respect to a seller who is required to register the tax shelter under A-36 or A-39 of Sec. 301.6111-1T, if the seller registers the tax shelter as soon as practicable after the seller first knows or has reason to know that the tax shelter has not been timely registered. A seller will not have reasonable cause, however, if the seller fails to make a reasonable inquiry to determine whether the tax shelter is registered.

Q-7. If a group of tax shelter organizers enters into a designation agreement under A-38 of Sec. 301.6111-1T and the designated organizer fails to register the tax shelter timely, will the other persons who have signed the designation agreement have reasonable cause for failure to register the tax shelter?

A-7. Each of the persons who signs a designation agreement, other than the designated organizer, will have reasonable cause for failure to register the tax shelter timely, provided the person does not participate in the tax shelter at a time when the person knows or has reason to know the tax shelter is not registered (without registering the tax shelter) and the person registers the tax shelter as required by A-39 of Sec. 301.6111-1T.

Q-8. What are the consequences if a tax shelter organizer files false or incomplete information on Form 8264?

A-8. Generally, a penalty will be imposed for filing information that a reasonable person would know or have reason to know is false or incomplete. The amount of the penalty is the greater of (i) \$500 or (ii) 1 percent of the aggregate amount invested in the tax shelter (computed in the manner prescribed in A-1 of this section), but not to exceed \$10,000. The \$10,000 limitation does not apply, however, if the tax shelter organizer intentionally disregards the requirements relating to registration.

Q-9. What is the maximum penalty that may be imposed on any one tax shelter?

A-9. Although the penalty for failure to register a tax shelter timely and the penalty for providing false or incomplete information may be imposed on each person who fails to register a tax shelter timely or who provides false or incomplete information, the maximum penalty is \$10,000 for anyone tax shelter, provided there is no intentional

disregard of the registration requirements. For example, assume that A is the principal organizer of a tax shelter, and seven other persons participate in the organization of the tax shelter, and assume the tax shelter is not registered before the day on which the first offering for sale of an interest in the tax shelter occurs. Assume also that the A and other participants do not have reasonable cause for failure to register timely and the failure is not due to intentional disregard of the registration requirement on the part of any of the participants. The maximum penalty that may be imposed is \$10,000, for which the 8 participants are jointly and severally liable.

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Q-10. How will the Internal Revenue Service determine whether a person has intentionally disregarded any of the registration requirements?

A-10. The determination of intentional disregard will be made individually for each tax shelter organizer. If one tax shelter organizer intentionally disregards the registration requirements, the \$10,000 limitation will not apply to that organizer. The limitation will apply, however, to any tax shelter organizers whose failure to register timely or whose furnishing of false or incomplete information was not due to intentional disregard.

Q-11. What is the maximum penalty that may be imposed if a tax shelter that is a substantial investment consisting of similar investments that are required to be aggregated under A-22 of Sec. 301.6171-1T is not timely registered or if false or incomplete information is filed with respect to the tax shelter?

A-11. The maximum penalty is \$10,000 as determined under A-6 of this section, with respect to any investment that is a tax shelter within the meaning of A-4 of Sec. 301.6111-1T without regard to the aggregation rules provided in A-22 of Sec. 301.6111-1T. The maximum penalty that may be imposed with respect to investments that are considered in a single tax shelter only by reason of the aggregation rules of A-22 of Sec. 301.6111-1T is \$10,000, even if more than one Form 8264 is required with respect to the aggregated investment (see A-48 of Sec. 301.6111-1T). The penalty may be imposed, however, if there is a failure with respect to any of the required forms.

Penalty for Failure To Furnish a Registration Number

Q-12. What is the penalty for failure to furnish the registration number to a purchaser or other transferee of an interest in a tax shelter as required by A-52 through A-54 of Sec. 301.6111-1T?

A-12. The penalty for failure to furnish the tax shelter registration number in the form required by A-55 through A-54 of Sec. 301.6111-1T is \$100 for each failure.

Penalty for Failure To Report a Registration Number on a Return

Q-13. What is the penalty for failure to include the tax shelter registration number on a return on which any deduction, loss, credit, other tax benefit, or any income attributable to a registered tax shelter is included?

A-13. The penalty for each failure by an investor to furnish the tax shelter registration number on such a return is \$50 for each tax shelter, unless the failure is due to reasonable cause.

There is a need for immediate guidance with respect to provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 6111 and 7805, Internal Revenue Code of 1954 (98 Stat. 678, 26 U.S.C. 6111; 68A Stat. 917, 26 U.S.C. 7805))

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