

FDC date	State	City	Airport	FDC No.	Subject
08/19/08	IL	Chicago	Chicago-O'Hare Intl	8/3952	RNAV (GPS) Z RWY 22L, ORIG ILS OR LOC RWY 14R, AMDT 30; ILS RWY 14R (CAT II), AMDT 30; ILS RWY 14R (CAT III), AMDT 30
08/20/08	IL	Chicago	Chicago-O'Hare Intl	8/4091	
08/20/08	IL	Chicago	Chicago-O'Hare Intl	8/4092	ILS OR LOC RWY 14L, AMDT 29
08/20/08	MD	Salisbury	Salisbury-Ocean City Wicomico Re- gional.	8/4188	ILS RWY 32, AMDT 6
07/08/08	UT	Salt Lake City	Salt Lake City Intl	8/4753	RNAV (GPS) RWY 17, ORIG VOR/DME RWY 34R, AMDT 9
07/08/08	UT	Salt Lake City	Salt Lake City Intl	8/4754	
07/10/08	VA	Richmond	Chesterfield County	8/6327	RNAV (GPS) RWY 33, ORIG NDB/DME RWY 9, AMDT 4. THIS NOTAM PUBLISHED IN TL08-19 IS HEREBY RE- SCINDED IN ITS ENTIRETY
07/24/08	FM	Pohnpei Island	Pohnpei Intl	8/9241	
07/24/08	FM	Pohnpei Island	Pohnpei Intl	8/9246	NDB OR GPS-B, AMDT 3. THIS NOTAM PUBLISHED IN TL08-19 IS HEREBY RE- SCINDED IN ITS ENTIRETY

[FR Doc. E8-20445 Filed 9-10-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 301**

[TD 9425]

RIN 1545-BF62

Section 6707A and the Failure To Include on Any Return or Statement any Information Required To Be Disclosed Under Section 6011 With Respect to a Reportable Transaction**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document contains temporary regulations regarding the imposition of penalties under section 6707A of the Internal Revenue Code (Code) for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on September 11, 2008.

Applicability Date: For dates of applicability, see § 301.6707A-1T(f).

FOR FURTHER INFORMATION CONTACT: Matthew Cooper, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to 26 CFR part 301 under section 6707A of the Code. Section 6707A was added to the Code by section 811 of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418) (AJCA), enacted on October 22, 2004. Section 6707A provides a monetary penalty for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. The penalty applies to returns and statements the due date for which is after October 22, 2004, and which were not filed before that date.

The amount of the section 6707A penalty for failure to include information required under section 6011 with respect to a reportable transaction, other than a listed transaction, is \$10,000 in the case of an individual, and \$50,000 in any other case. If the failure is with respect to a listed transaction, the penalty is increased to \$100,000 in the case of an individual, and \$200,000 in any other case.

Section 6707A(d)(1) grants the Commissioner authority to rescind all or a portion of any penalty imposed under section 6707A if (1) the violation relates to a reportable transaction that is not a listed transaction and (2) rescission of the penalty would promote compliance with the requirements of the Code and effective tax administration. Section 6707A(d)(2) provides that the Commissioner's determination whether to rescind the penalty may not be reviewed in any judicial proceeding. Rev. Proc. 2007-21, 2007-1 CB 613, provides the procedures to follow to request rescission of all or any portion of a penalty assessed under section 6707A with respect to a reportable

transaction other than a listed transaction.

Section 6707A(e) requires a person that is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934, or consolidated reports with another person, to disclose in those reports for the periods specified by the Secretary, the requirement to pay the penalties set forth in section 6707A(e)(2) (for example, certain penalties under section 6662(h) and penalties under sections 6662A(c), 6707A(b)(2), or 6707A(e)). Rev. Proc. 2005-51, 2005-2 CB 296, which was amplified by Rev. Proc. 2007-25, 2007-1 CB 761, describes the reports on which the disclosures must be made, the information that must be disclosed, and the deadlines by which persons must make the disclosures on the reports to avoid additional penalties under section 6707A(e). If the person fails to disclose the requirement to pay the penalties, then section 6707A(e) requires that the failure be treated as a failure to disclose a listed transaction to which an additional section 6707A penalty applies. Because a penalty imposed under section 6707A(e) is treated as a penalty imposed with respect to a listed transaction, the penalty is not subject to rescission.

To implement the pertinent provisions of the AJCA, the Treasury Department and the IRS proposed amendments to the rules relating to the disclosure of reportable transactions by taxpayers under section 6011 (see Prop. Treas. Reg. § 1.6011-4, 2006-49 IRB 1049) and finalized those proposed regulations in TD 9350 (72 FR 43146) published on August 3, 2007.

Sections 1.6011-4(a) and (d) generally require that a taxpayer file a disclosure statement on Form 8886, "Reportable

Transaction Disclosure Statement” (or successor form) for each reportable transaction in which the taxpayer participated. Section 1.6011-4(e)(1) provides that a disclosure statement for a reportable transaction must be attached to the taxpayer’s tax return for each taxable year for which a taxpayer participates in a reportable transaction. In addition, a disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer’s participation in a reportable transaction. The taxpayer also must send a copy of the disclosure statement to the IRS Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement pertaining to a particular reportable transaction is first filed. If a reportable transaction results in a loss that is carried back to a prior year, the disclosure statement for the reportable transaction must be attached to the taxpayer’s application for tentative refund or amended tax return for that prior year. If a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K-1, “Partner’s Share of Income, Deductions, Credits, etc.,” less than 10 calendar days before the due date of the taxpayer’s return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer’s return (including extensions).

For transactions entered into after August 2, 2007, § 1.6011-4(e)(2)(i) provides that if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer’s tax return (including an amended return) reflecting the taxpayer’s participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or a transaction of interest, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest.

Published guidance identifying listed transactions or transactions of interest involving estate, gift, employment, and certain excise taxes will specify the

manner in which taxpayers must disclose those transactions. See §§ 20.6011-4; 25.6011-4; 31.6011-4; 53.6011-4; 54.6011-4; and 56.6011-4.

The Treasury Department and IRS issued Notice 2005-11, 2005-1 CB 493, providing interim guidance regarding the imposition and rescission of penalties under section 6707A (see § 601.601(d)(2)(ii)(b)). Specifically, the notice stated that the IRS will impose a penalty under section 6707A with respect to each failure to disclose a reportable transaction within the time and in the form and manner provided by section 6011 and the regulations thereunder. Accordingly, a taxpayer would be subject to a penalty under section 6707A for: (1) The failure to attach an appropriate reportable transaction disclosure statement to an original or amended return; or (2) the failure to provide a copy of an appropriate disclosure statement to OTSA, if required, within the time and in the form and manner provided by section 6011 and the regulations thereunder. A taxpayer that failed to attach a reportable transaction disclosure statement to an original or amended return and failed to provide a copy of a required disclosure statement to OTSA would be subject to a single penalty under section 6707A.

Notice 2005-11 requested comments regarding the rules and standards relating to section 6707A, including the factors that should be considered in exercising the rescission authority under section 6707A(d) and how voluntary, but untimely disclosures (for example, if a taxpayer failed to make a required disclosure upon filing a return, but subsequently submits the required disclosure statement) should be treated in applying the section 6707A penalty. Since then, many have observed that there is little incentive for remedial action if a complete but delinquent disclosure statement is penalized as harshly as a complete failure to submit a disclosure statement. The Treasury Department and the IRS are currently considering whether it would be appropriate to publish a rule that would treat as timely a Form 8886 voluntarily filed prior to the date the IRS first contacts the taxpayer concerning a tax examination for the taxable period in which the taxpayer participated in the reportable transaction. Other appropriate dates by which filings must be made to qualify for relief would be considered as well. Comments are specifically requested on the necessity and appropriateness of publishing guidance addressing this issue.

Explanation of Provisions

These temporary regulations provide rules reflecting the AJCA enactment of the section 6707A penalty for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

These temporary regulations provide that a taxpayer may incur a separate penalty under section 6707A with respect to each reportable transaction that the taxpayer was required, but failed, to disclose within the time and in the form and manner required under § 1.6011-4(d) and (e) or as stated in other published guidance. A taxpayer who is required to disclose a reportable transaction on a Form 8886 (or successor form) filed with a return, amended return, or application for tentative refund and who also is required to disclose the transaction on a Form 8886 (or successor form) with OTSA, is subject to only a single section 6707A penalty for failure to make either one or both of those disclosures. Additionally, these temporary regulations define “reportable transaction” and “listed transaction” by reference to the regulations under section 6011.

These temporary regulations restate the existing authority of the Secretary to prescribe the procedures to request rescission of a section 6707A penalty with respect to a nonlisted reportable transaction by revenue procedure or other guidance published in the Internal Revenue Bulletin. Rev. Proc. 2007-21 describes the procedures for requesting rescission of a penalty assessed under section 6707A, including the deadline by which a person must request rescission; the information the person must provide in the rescission request; the factors that weigh in favor of and against granting rescission; where the person must submit the rescission request; and the rules governing requests for additional information from the person requesting rescission.

These temporary regulations adopt factors mentioned in the legislative history to section 6707A that the Commissioner (or the Commissioner’s delegate) should take into account during the determination whether to rescind all or a portion of any penalty imposed under section 6707A. See H.R. Conf. Rep. No. 755, 108th Cong., 2d Sess. at 599 (2004). Factors that these regulations identify as weighing in favor of rescission reflect circumstances that suggest that sustaining assessment of the penalty is against equity and good conscience.

These temporary regulations generally adopt the list of factors stated in Rev. Proc. 2007–21. One additional factor these regulations identify as weighing in favor of granting rescission is whether the penalty assessed is disproportionately larger than the tax benefit received. The factors identified in these temporary regulations do not represent an exclusive list, and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

Because it is the policy of the IRS to administer penalties in a manner that promotes voluntary compliance with the tax laws, it will weigh heavily in favor of rescission if a taxpayer voluntarily files the form required under section 6011: (i) Prior to the date the IRS first contacts the taxpayer (including contacts by the IRS with any partnership in which the taxpayer is a partner, any S corporation in which the taxpayer is a shareholder, or any trust in which the taxpayer is a beneficiary) concerning a tax examination for the tax period in which the taxpayer participated in the reportable transaction; and (ii) other circumstances suggest that the taxpayer did not delay filing an untimely but properly completed Form 8886 until after the IRS had taken steps to identify the taxpayer's participation in the reportable transaction in question. See IRS Policy Statement 20–1 (June 29, 2004).

The temporary regulations mirror Rev. Proc. 2007–21 in providing that a rescission request is not the appropriate forum to contest whether the elements necessary to support a penalty under section 6707A exist. That question is for the examining agent, the IRS Appeals Division, and the courts. A rescission determination is based on the premise that a violation of section 6707A exists but, nonetheless, the penalty should be rescinded (or abated). Accordingly, the temporary regulations provide that the Commissioner (or the Commissioner's delegate) will not consider whether the taxpayer in fact failed to comply with section 6011. Furthermore, the temporary regulations provide that the Commissioner (or the Commissioner's delegate) will not take into consideration doubt as to liability for, or collectibility of, the penalties in determining whether to rescind the penalty.

Additionally, these temporary regulations restate the existing authority of the Secretary to prescribe by revenue

procedure or other guidance published in the Internal Revenue Bulletin the manner in which taxpayers must disclose the requirement to pay certain penalties on reports filed with the Securities and Exchange Commission. Rev. Procs. 2005–51 and 2007–25 are the current published guidance items that provide these disclosure rules and remain effective until further guidance is issued in the form of regulations or other guidance that explicitly supersedes these two documents.

Effect on Other Documents

The temporary regulations supersede Notice 2005–11.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. The temporary regulations are necessary to promote taxpayers' immediate compliance with the regulations recently finalized under section 6011 and to provide for regulatory relief in appropriate circumstances, including the additional taxpayer favorable factor of whether the penalty assessed is disproportionately larger than the tax benefit received. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Matthew Cooper of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6707A–1T is added to read as follows:

§ 301.6707A–1T Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

(a) *In general.* Any person who fails to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction may be subject to a monetary penalty. The penalty for failure to include information with respect to a reportable transaction, other than a listed transaction, is \$10,000 in the case of a natural person, and \$50,000 in any other case. The penalty for failure to include information with respect to a listed transaction is \$100,000 in the case of a natural person, and \$200,000 in any other case. The section 6707A penalty is in addition to any other penalty that may be imposed.

(b) *Definitions*—(1) *Reportable transaction.* The term “reportable transaction” is defined in § 1.6011–4(b)(1) of this chapter.

(2) *Listed transaction.* The term “listed transaction” is defined in section 6707A(c) of the Code and § 1.6011–4(b)(2) of this chapter.

(c) *Assessment of the penalty*—(1) *In general.* The Internal Revenue Service (IRS) may assess a penalty under section 6707A with respect to each failure to disclose a reportable transaction within the time and in the form and manner provided by § 1.6011–4(d) and (e) of this chapter or pursuant to the time, form, and manner stated in other published guidance. A taxpayer who is required to disclose a reportable transaction with a return, amended return, or application for tentative refund and who also is required to disclose the transaction on a Form 8886, “Reportable Transaction Disclosure Statement” (or successor form), filed with the IRS Office of Tax Shelter Analysis (OTSA), is subject to only a single section 6707A penalty for failure to make either one or both of those disclosures. If section 6011 and the regulations thereunder require a disclosure statement to be filed at the time that a return is filed, the disclosure statement is considered to be timely filed if it is filed at the same time as the return, even if the return is filed untimely after its due date.

(2) *Examples.* The rules of paragraph (c)(1) of this section are illustrated by the following examples:

Example 1. Taxpayer T is required to attach a Form 8886 to its return for the 2007 taxable year and to send a copy of the Form 8886 to OTSA at the time it files its return. Taxpayer T fails to attach the Form 8886 to its return and fails to send a copy of the Form 8886 to OTSA. Taxpayer T is subject to a single penalty under section 6707A for failure to disclose because Taxpayer T failed to comply with the disclosure requirements of section 6011. A penalty under section 6707A also would apply if Taxpayer T had failed to comply with only one of the two requirements.

Example 2. Same as *Example 1*, except that Taxpayer T also subsequently files an amended return for 2007 that reflects Taxpayer T's participation in the reportable transaction. Taxpayer T fails to attach a Form 8886 to the amended return as required by § 1.6011-4(e)(1) of this chapter. Taxpayer T is subject to an additional penalty under section 6707A for failing to disclose a reportable transaction.

Example 3. In November 2009, Taxpayer U participates in a reportable transaction resulting in a loss that is carried back to 2008. Taxpayer U fails to attach a Form 8886 to its 2008 amended return claiming the loss carryback. Section 1.6011-4(e)(1) of this chapter requires Taxpayer U to attach a Form 8886 to its amended return for the 2008 taxable year. Taxpayer U is subject to a penalty under section 6707A.

Example 4. Taxpayer P participates in a non-listed reportable transaction and is required to attach a Form 8886 to its return for the 2008 taxable year that is due on March 16, 2009. Taxpayer P timely files its return but fails to attach the Form 8886 to its return. After the due date of Taxpayer P's return and without an extension of time to file, Taxpayer P files an amended return relating to the 2008 taxable year to which Taxpayer P attaches the Form 8886. Taxpayer P is subject to a penalty under section 6707A for failure to disclose because Taxpayer P failed to comply with the disclosure requirements of section 6011 by not attaching a Form 8886 to its return for the 2008 taxable year that was timely filed on or before the due date of March 16, 2009. A penalty under section 6707A also would apply if Taxpayer P had failed to attach a Form 8886 to its amended return. Taxpayer P, nevertheless, may file a complete and proper Form 8886 and request in writing rescission of the penalties assessed within 30 days after the date the IRS sends notice and demand for payment of the penalties in accordance with Rev. Proc. 2007-21. The filing of the untimely Form 8886 will weigh heavily in favor of rescission provided that Taxpayer P files the Form 8886 prior to the date the IRS first contacts the taxpayer concerning a tax examination for the 2008 taxable year and there are no other circumstances that suggest that Taxpayer P delayed filing the Form 8886 until after the IRS had taken steps to identify Taxpayer P's participation in the reportable transaction in question.

Example 5. Shareholder V, a shareholder in an S Corporation, receives a timely

Schedule K-1 "Partner's Share of Income, Deductions, Credits, etc.," on April 10, 2009, and determines that she is required to attach a Form 8886 to her individual income tax return for the 2008 taxable year. Shareholder V fails to attach the Form 8886 to her 2008 individual income tax return but files a proper and complete Form 8886 with OTSA on June 12, 2009. Section 1.6011-4(e)(1) of this chapter provides that if a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K-1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). Accordingly, Shareholder V is not subject to a penalty under section 6707A for failure to disclose.

Example 6. In July 2008, Taxpayer W participates in Transaction Z, a transaction that is not reportable as of April 15, 2009, the date Taxpayer W files his individual income tax return for 2008. On July 15, 2009, Transaction Z is identified as a transaction of interest. Section 1.6011-4(e)(2)(i) of this chapter provides that if a transaction that is not otherwise a reportable transaction becomes a listed transaction or a transaction of interest after the taxpayer has filed a tax return (including an amended return) reflecting the taxpayer's participation in the listed transaction or transaction of interest and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction or transaction of interest, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction became a listed transaction or transaction of interest, regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or a transaction of interest. Taxpayer W fails to file a Form 8886 with OTSA by October 13, 2009, 90 calendar days after the date that the transaction was identified as a transaction of interest. Accordingly, Taxpayer W is subject to a penalty under section 6707A.

Example 7. Taxpayer X is required to attach a Form 8886 to its return for the 2008 taxable year with respect to participation in a listed transaction. Taxpayer X attaches the Form 8886 to its return in a timely manner. The Form 8886, however, does not describe any of the potential tax benefits expected to result from this transaction and states that information will be provided upon request. Because the Form 8886 does not describe any of the potential tax benefits expected to result from the transaction and merely provides that the information will be provided upon request, the Form 8886 filed by Taxpayer X is incomplete and does not satisfy the requirements set forth in § 1.6011-4(d) of this chapter. Taxpayer X is subject to a penalty under section 6707A for failure to disclose in the appropriate manner.

(d) *Rescission authority*—(1) *In general.* The Commissioner (or the Commissioner's delegate) may rescind the section 6707A penalty if—

(i) The violation relates to a reportable transaction that is not a listed transaction, and

(ii) Rescinding the penalty would promote compliance with the requirements of the Code and effective tax administration.

(2) *Requesting rescission.* The Secretary may prescribe the procedures for a taxpayer to request rescission of a section 6707A penalty with respect to a reportable transaction other than a listed transaction by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin.

(3) *Factors that weigh in favor of granting rescission.* In determining whether rescission would promote compliance with the requirements of the Code and effective tax administration, the Commissioner (or the Commissioner's delegate) will take into account the following list of factors that weigh in favor of granting rescission. This is not an exclusive list and no single factor will be determinative of whether to grant rescission in any particular case. Rather, the Commissioner (or the Commissioner's delegate) will consider and weigh all relevant factors, regardless of whether the factor is included in this list.

(i) The taxpayer, upon becoming aware that it failed to disclose a reportable transaction properly, filed a complete and proper, albeit untimely, Form 8886 (or successor form). This factor will weigh heavily in favor of rescission provided that—

(A) the taxpayer files the Form 8886 prior to the date the IRS first contacts the taxpayer (including contacts by the IRS with any partnership in which the taxpayer is a partner, any S corporation in which the taxpayer is a shareholder, or any trust in which the taxpayer is a beneficiary) concerning a tax examination for the tax period in which the taxpayer participated in the reportable transaction; and

(B) other circumstances suggest that the taxpayer did not delay filing an untimely but properly completed Form 8886 until after the IRS had taken steps to identify the taxpayer's participation in the reportable transaction in question.

(ii) The failure to disclose properly was due to an unintentional mistake of fact that existed despite the taxpayer's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The taxpayer has an established history of properly disclosing other

reportable transactions and complying with other tax laws.

(iv) The taxpayer demonstrates that the failure to include on any return or statement any information required to be disclosed under section 6011 arose from events beyond the taxpayer's control.

(v) The taxpayer cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a taxpayer cooperates with the IRS, the Commissioner (or the Commissioner's delegate) will take into account whether the taxpayer meets the deadlines described in Rev. Proc. 2007-21 (or successor document) (see § 601.601(d)(2)(ii)(b) of this chapter) for complying with requests for additional information.

(vi) Assessment of the penalty weighs against equity and good conscience, including whether the penalty is disproportionate to the tax benefit received and whether the taxpayer demonstrates that there was reasonable cause for, and the taxpayer acted in good faith with respect to, the failure to timely file or to include on any return any information required to be disclosed under section 6011. An important factor in determining reasonable cause and good faith is the extent of the taxpayer's efforts to ensure that persons who prepared the taxpayer's return were informed of the taxpayer's participation in the reportable transactions. The presence of reasonable cause, however, will not necessarily be determinative of whether to grant rescission.

(4) *Absence of favorable factors weighs against rescission.* The absence of facts establishing the factors described in paragraph (d)(3) of this section weighs against granting rescission. The absence of any one of these factors, however, will not necessarily be determinative of whether to grant rescission.

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for, or collectibility of, the penalties.

(e) *Reports to the Securities and Exchange Commission (SEC)*—(1) *In general.* Under section 6707A(e), a taxpayer who is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (or is required to file consolidated reports with another person) must disclose in periodic reports filed with the SEC the

requirement to pay each of the following penalties:

(i) The penalty imposed by section 6707A(a) in the amount of \$200,000 for failure to disclose a listed transaction.

(ii) The accuracy-related penalty imposed by section 6662A(a) at the 30-percent rate determined under section 6662A(c) for a reportable transaction understatement with respect to which the relevant facts affecting the tax treatment of the reportable transaction were not adequately disclosed in accordance with regulations prescribed under section 6011.

(iii) The accuracy-related penalty imposed by section 6662(a) at the 40-percent rate determined under section 6662(h) for a gross valuation misstatement, if the taxpayer (but for the exclusionary rule of section 6662A(e)(2)(C)(ii)) would have been subject to the accuracy-related penalty under section 6662A(a) at the 30-percent rate determined under section 6662A(c).

(iv) The penalty described in paragraph (e)(3) of this section for failure to disclose in periodic reports filed with the SEC the requirement to pay any of the penalties described in paragraphs (e)(1)(i) through (iii) or (e)(3) of this section.

(2) *Manner and content of disclosure.* The Secretary may prescribe the manner in which disclosure of the requirement to pay the penalties identified in paragraph (e)(1) of this section must be made on reports filed with the SEC, including identification of the specific SEC form and section thereof in which the taxpayer must make the disclosure as well as specification of the timing and contents of the disclosure, by publishing a revenue procedure or other guidance in the Internal Revenue Bulletin.

(3) *Penalty for failure to disclose in SEC filings.* Any taxpayer who is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (or is required to file consolidated reports with another person) may be subject to a penalty in the amount of \$200,000 for each failure to disclose the requirement to pay a penalty identified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The taxpayer also may be subject to an additional penalty in the amount of \$200,000 for each failure to disclose a penalty arising under this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The penalty provided by this paragraph is not subject to

rescission as described in paragraph (d) of this section.

(f) *Effective/applicability date*—(1) The rules of this section apply to disclosure statements that are due after September 11, 2008.

(2) The applicability of this section expires on or before September 9, 2011.

L.E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: September 5, 2008.

Eric Solomon,

Assistant Secretary of the Treasury, (Tax Policy).

[FR Doc. E8-21161 Filed 9-10-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2008-0900]

Safety Zone; Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Milwaukee Harbor Safety Zone in Milwaukee Harbor from 8:30 p.m. through 8:45 p.m. on September 29, 2008. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from portions of the Captain of the Port Lake Michigan Zone.

DATES: The regulation in 33 CFR 165.935 will be enforced from 8:30 p.m. through 8:45 p.m. on September 29, 2008.

FOR FURTHER INFORMATION CONTACT:

Petty Officer Eric Vogel, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7154.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce Safety Zone, Milwaukee Harbor, Milwaukee, WI, 33 CFR 165.935 for the following event: Milwaukee Brewers Rally Monday, on September 29, 2008, from 8:30 p.m. through 8:45 p.m.

All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the