

§ 7701(a)(13)

SUBTITLE F, CH. 79

(13) **Commissioner.**—The term "Commissioner" means the Commissioner of Internal Revenue.

(14) **Taxpayer.**—The term "taxpayer" means any person subject to any internal revenue tax.

(15) **Military or naval forces and Armed Forces of the United States.**—The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) **Withholding agent.**—The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461.

(17) **Husband and wife.**—As used in sections 152(b)(4), 682, and 2516 if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

(18) **International organization.**—The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 285-287).

(19) **Domestic building and loan association.**—The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which either (i) is an insured institution within the meaning of section 401(a) of the National Housing Act (12 U.S.C., sec. 1724(a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision authority.

CHAPTER 3—WITHHOLDING OF TAX ON
NONRESIDENT ALIENS AND
FOREIGN CORPORATIONS

Subchapter A. Nonresident aliens and foreign corporations.
Former Subchapter B. [Tax-free covenant bonds.] Repealed.
Subchapter B. Application of withholding provisions.

SUBCHAPTER A—NONRESIDENT ALIENS
AND FOREIGN CORPORATIONS

- IRC §1441. Withholding of tax on nonresident aliens.
- IRC §1442. Withholding of tax on foreign corporations.
- IRC §1443. Foreign tax-exempt organizations.
- IRC §1444. Withholding on Virgin Islands source income.
- IRC §1445. Withholding of tax on dispositions of United States real property interests.
- IRC §1446. Withholding of tax on foreign partners' share of effectively connected income.

IRC §1441. *WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

(a) **General Rule.**—Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitute gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) **Income Items.**—The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), ¹(J), or (M) of section 101(a)(15) of the Immigration and Nationality Act and which are—

- (1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or
- (2) in the case of an individual who is not a candidate for a degree at an educational organization described in 170(b)(1)(A)(ii), granted by—

[Footnote IRC §1441] * Implied amendment by '88 TMRA, P.L. 100-647, 11-10-88.

Sec. 1012(aa)(3)(D) and (J), '88 TMRA, provide that, to the extent that the amendments made to IRC §1441 by sections 123 and 1214, '86 TRA, (except for determination of foreign tax credit) are contrary to treaty obligations in effect on 10-22-86, the amendments shall not be applied.

Matter in *italics* in IRC §1441(b) added by section 1001(d)(2)(A), '88 TMRA, P.L. 100-647, 11-10-88, which struck out:

(1) "or (J) of section 101(a)(15) of the Immigration and Nationality Act and which are incident to a qualified scholarship to which section 117(a) applies, but only to the extent such amounts are includible in gross income."

Effective date (Sec. 1019(a), '88 TMRA and section 151(d), '86 TRA).—Applies to taxable years beginning after 12-31-86, but only in the case of scholarships and fellowships granted after 8-16-86.

IRC §1451. TAX-FREE COVENANT BONDS.

[Repealed by section 474(r)(29)(A), '84 TRA.]¹

SUBCHAPTER B—APPLICATION OF WITHHOLDING PROVISIONS

- IRC §1461. Liability for withheld tax.
- IRC §1462. Withheld tax as credit to recipient of income.
- IRC §1463. Tax paid by recipient of income.
- IRC §1464. Refunds and credits with respect to withheld tax.
- IRC §1465. [Definition of withholding agent.] Repealed.

— IRC §1461. ¹LIABILITY FOR WITHHELD TAX.

Every person required to deduct and withhold any tax under this chapter² is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

[Footnote IRC §1451] Section 474(r)(29)(A), '84 TRA repealed IRC §1451:

(1) "IRC §1451. TAX-FREE COVENANT BONDS.

(a) **Requirement of Withholding.**—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this subtitle on the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 percent (regardless of whether the liability assumed by the obligor is less than, equal to, or greater than 2 percent) of the interest on such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to—

- (1) an individual,
- (2) a partnership, or
- (3) a foreign corporation not engaged in trade or business within the United States.

(b) **Payments to Foreigners.**—Notwithstanding subsection (a), if the liability assumed by the obligor does not exceed 2 percent of the interest, then the deduction and withholding shall be at the rate of 30 percent in the case of—

- (1) a nonresident alien individual,
- (2) any partnership not engaged in trade or business within the United States and composed in whole or in part of nonresident aliens, and
- (3) a foreign corporation not engaged in trade or business within the United States.

(c) **Owner Unknown.**—If the owners of such obligations are not known to the withholding agent, the Secretary may authorize such deduction and withholding to be at the rate of 2 percent, or, if the liability assumed by the obligor does not exceed 2 percent of the interest, then at the rate of 30 percent.

(d) **Benefit of Personal Exemptions.**—Deduction and withholding under this section shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the deduction for personal exemptions provided in section 151; nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Secretary under section 874.

(e) **Alien Residents of Puerto Rico.**—For purposes of this section, the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(f) **Income of Obligor and Obligee.**—The obligor shall not be allowed a deduction for the payment of the tax imposed by this subtitle, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee."

Effective date (Sec. 475(a), (b), '84 TRA).—(a) Generally applies to taxable years beginning after 12-31-83, and to carrybacks from such years.

(b) **Tax-free covenant bonds.**—Shall not apply with respect to obligations issued before 1-1-84.

[Footnote IRC §1461] Section 103(i), Foreign Investors Tax Act of 1966, struck out IRC §1461:

(1) "RETURN AND PAYMENT OF"

(2) "shall, on or before March 15 of each year, make return thereof and pay the tax to the officer designated in section 6151. Every such person"

Effective date (Sec. 103(n)(3), Foreign Investors Act of 1966).—Applies with respect to payments occurring after 12-31-66.

1042S required by paragraph (c) of §1.1461-2 with respect to such annuity for such calendar year.

(h) **Interest on bonds sold between interest dates.**—Except as provided by paragraph (b)(2)(ii) of §1.1441-2, the tax is not required to be withheld under §1.1441-1 on accrued interest paid by the buyer in connection with the sale of bonds between interest dates, even though the interest is subject to tax under section 871 or section 881. The exemption from withholding granted by this paragraph is not a determination that the accrued interest is not fixed or determinable annual or periodical income.

(i) **Income of foreign central bank of issue or Bank for International Settlements.** (1) Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from bank deposits. In the absence of knowledge that a foreign central bank of issue, or the Bank for International Settlements, is operating without the scope of the exclusion granted by section 895, the withholding agent is not required to withhold under §1.1441-1 upon income derived by such bank from obligations of the United States or of any agency or instrumentality thereof, or upon interest derived from deposits with persons carrying on the banking business, if the withholding agent receives from the bank a statement certifying that the bank—

(i) Is a foreign central bank of issue, or the Bank for International Settlements, as the case may be,

(ii) Is the owner of the obligations of the United States or of any agency or instrumentality thereof, or the owner of such bank deposits, as the case may be, and

(iii) Does not, and will not, hold such obligations or such bank deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) A copy of the statement filed pursuant to paragraph (i)(1) of this section shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (c) of §1.1461-2 with respect to payments of income made on such obligations or bank deposits during the calendar year.

★ **○** §1.1441-5 **Claiming to be a person not subject to withholding.** (TD 6187, filed 7-5-66 as amended by TD 6238, filed 6-10-57; republished in TD 6500, filed 11-25-60; amended by TD 6908, filed 12-30-66; TD 7277, filed 5-14-73; TD 7842, filed 11-2-82; TD 7977, filed 9-19-84; TD 8160, filed 9-8-87.)

(a) **Individuals.**—For purposes of chapter 3 of the Code an individual's written statement that he or she is a citizen or

resident of the United States may be relied upon by the payer of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate. An alien may claim residence in the United States by filing Form 1078 with the withholding agent in duplicate in lieu of the above statement.

(b) **Partnerships and corporations.**—For purposes of chapter 3 of the Code a written statement from a partnership or corporation claiming that it is not a foreign partnership or foreign corporation may be relied upon by the withholding agent as proof that such partnership or corporation is domestic. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer shall also be given.

(c) **Disposition of statement and form.**—The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to Internal Revenue Service Center, Philadelphia, PA 19255. The original statement shall be retained by the withholding agent.

(d) **Definitions.** — For determining whether an alien individual is a resident of the United States see §1.871-2. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a)(4) and (5) and §301.7701-5 of this chapter. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with §1.1441-1, a resident for purposes of this section. For definition of the term "United States" and for other geographical definitions relating to the continental shelf see section 638 and §1.638-1.

○ §1.1441-6 **Withholding pursuant to the application of a tax treaty which confers a reduced rate of, or an exemption from, United States income tax.** (TD 7157, filed 12-29-71; amended by TD 7842, filed 11-2-82; TD 7977, filed 9-19-84.)

(a) **In general.** The rate of 30 percent or 14 percent shall be reduced as may be provided by a treaty with any country. In case of payments of any of the items specified in §1.1441-2 (other than dividends) made on or before December 31, 1971, and in the case of payments of dividends made at any time, the withholding agent shall determine the applicable rate pursuant to the appropriate tax treaty and the regulations issued thereunder. In case of payment on or after January 1, 1972, of any of the items specified in §1.1441-2 (other than dividends), the requirements of paragraphs (b) and (c) of this section shall apply in lieu of the ownership certificate or



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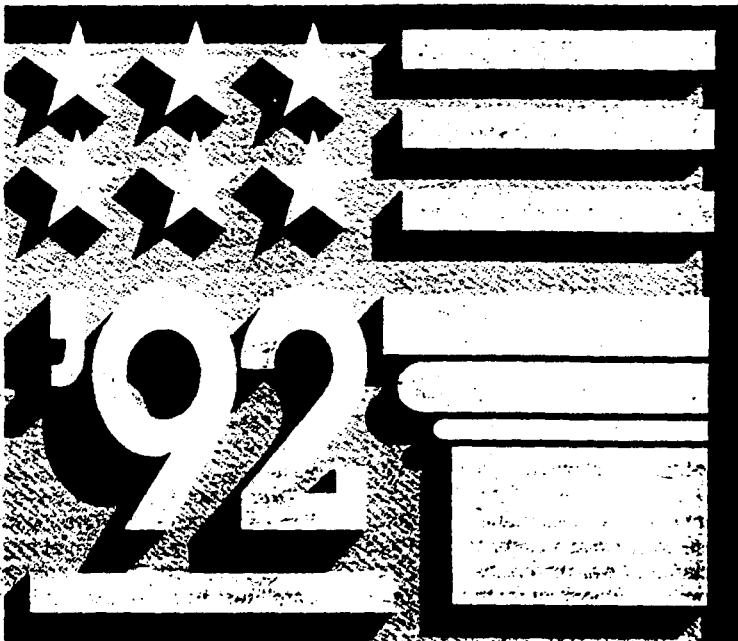
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Important Changes

Away-from-home expenses. For expenses paid or incurred after 1992, a deduction for away-from-home expenses is not permitted if an individual is away from his or her tax home for more than 1 year. "F," "J," or "M" visa holders who qualify for reduced withholding on scholarships and fellowship grants may not deduct these expenses on Form W-4, *Employee's Withholding Allowance Certificate*, if they expect their stay to last for more than 1 year. For more information, see *Reduced Withholding*, later under *Scholarships and Fellowship Grants*.

Backup withholding. For amounts paid after 1992, the backup withholding rate is increased to 31%. For more information about backup withholding, see *Backup withholding*, later under *U.S. Taxpayer Identification Numbers*.

Distributions of effectively connected income by publicly traded partnerships. The withholding tax rate on distributions of effectively connected income by publicly traded



- 1) 31 days during the current calendar year, and
- 2) 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only 1/2 the number of days of presence in the first preceding year, and only 1/4 the number of days in the second preceding year.

You generally do not count days the alien is in the United States as a teacher, student, or trainee on an "F," "J," or "M" visa.

For more information on resident and non-resident status, the tests for residence, and the exceptions to them, see Publication 519, *U.S. Tax Guide for Aliens*.

Nonresident alien individuals married to either U.S. citizens or resident aliens may choose to be treated as resident aliens for income tax purposes. However, these individuals are still subject to the withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these individuals are subject to the withholding rules that apply to U.S. citizens and residents. The rules explained later under *Compensation Subject to Graduated Withholding* do not apply to these aliens. Instead, see Publication 15, Circular E, *Employer's Tax Guide*.

A foreign corporation or partnership is one that does not fit the definition of a domestic corporation or partnership. A **domestic corporation or partnership** is one that was created or organized in the United States, or under the laws of the United States or any of its states.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- 2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
- 2) At least 65% of the corporation's gross income is effectively connected with the

conduct of a trade or business in the Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and

- 3) No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Note: The provisions discussed above for *Virgin Islands and American Samoa corporations* are extended to Guam and CNMI corporations when an implementing agreement is in effect between the United States and each of those possessions. For further information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Resident of Puerto Rico. Even if an alien is a bona fide resident of Puerto Rico for the entire year and is required to pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. This alien will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

Trustee, administrator, or executor. Income paid to a nonresident alien trustee, administrator, or executor of a trust or an estate is subject to these withholding rules even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to withholding of a 4% excise tax rather than the ordinary statutory 30% income tax. For more information on foreign private foundations, see Publication 578, *Tax Information for Private Foundations and Foundation Managers*.

Other foreign organizations, associations, and charitable institutions. An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code even if it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to these foreign tax-exempt organizations if the IRS has determined that they are not foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding*, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, *Tax on Unrelated Business Income of Exempt*

Organizations) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

Withholding Exemptions and Reductions

You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. However, the alien may be allowed an exemption from withholding or a reduced rate of withholding as explained here.

Evidence of residence. If an individual gives you a written statement stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you do not have to withhold tax. An alien may claim U.S. residence by filing with you, Form 1078, *Certificate of Alien Claiming Residence in the United States*. Keep the statement or form for your records. Do not file it with the IRS. Holders of visas that do not permit permanent residence in the United States should write to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice about filing a Form 1078 and, if filing Form 1078 is proper, about the need to make estimated tax payments.

A U.S. bank that pays income subject to withholding may decide whether to accept an individual's proof of U.S. citizenship or residence given through a foreign bank to which income is paid. If the U.S. bank accepts this proof, it will not be liable for payment of tax if later it is shown that the individual was a nonresident alien. If it accepts the proof, the U.S. bank must file Form 1042S showing the name, address, identification number, and the particular securities of the actual owner, and indicating that it is relying on proof submitted by the foreign bank as its basis for not withholding.

Partnerships and corporations. You may rely on a written statement from a partnership or corporation claiming that it is not foreign as proof that the partnership or corporation is domestic and not subject to withholding tax. It must contain the entity's employer identification number, the address of its U.S. office or place of business, and the signature of a member of the partnership or the signature and official title of the corporate officer. Keep the statement for your records. Do not file it with the IRS.

Withholding exemption for undue administrative burden. Do not withhold on income paid to a foreign partnership or corporation engaged in a trade or business in the United States if the withholding would impose an undue administrative burden for the tax year and the collection of the tax would not be jeopardized by not withholding. These facts must be

proprietors, as required by returns, statements or other documents and their related instructions. Such documents often require an individual's own social security number in connection with his individual taxes, and his employer identification number in connection with his business taxes.

(2) *Certain grantor trusts.* A grantor trust described in § 1.671-4(b) shall not obtain an employer identification number until such time as the trust is no longer described in § 1.671-4(b). Instead, the grantor of such a trust must furnish his or her social security number (or, when applicable, his or her employer identification number) to payers of income, and payees must report income as if paid to the grantor, not the trust.

(b) *Use of one's own number.* Every person who files under this title a return, statement, or other document shall furnish his taxpayer identifying number as required by the forms and the instructions relating thereto. A person whose number must be included on a document filed by another person shall give the taxpayer identifying number so required to the other person on request. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see paragraphs (a) and (b) of § 31.6011(b)-2 of this chapter (Employment Tax Regulations). For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see § 31.6011(b)-1 of this chapter (Employment Tax Regulations).

(c) *Use of another's number.* Every person required under this title to file a return, statement, or other document shall furnish such taxpayer identifying numbers of other persons as required by the forms and the instructions relating thereto. If he does not know the taxpayer identifying number of the other person, he shall request such number of the other person. A request should state that the identifying number is required to be furnished under authority of law. When the person filing the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, he shall sign an affida-

vit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when his attention has been drawn to them.

(d) *Obtaining a taxpayer identifying number—(1) Social security number.* Any individual required to furnish a social security number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-5, which may be obtained from any Social Security Administration or Internal Revenue Service office. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Individuals who are ineligible for or do not wish to participate in the benefits of the social security program shall nevertheless obtain a social security number if they are required to furnish such a number pursuant to paragraph (b) of this section.

(2) *Employer identification number.* Any person required to furnish an employer identification number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-4, which may be obtained from any office of the Internal Revenue Service. He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for.

(e) *Banks, and brokers and dealers in securities.* For additional requirements relating to deposits, share accounts, and brokerage accounts, see 31 CFR 103.34 and 103.35.

Internal Revenue Service, Treasury

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such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6672-1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

§ 301.6673-1 Damages assessable for instituting proceedings before the Tax Court merely for delay.

Any damages awarded to the United States by the Tax Court under section 6673 against a taxpayer for instituting proceedings before the Tax Court merely for delay shall be assessed at the same time at the deficiency and shall be paid upon notice and demand from the district director or the director of the regional service center and shall be collected as a part of the tax.

§ 301.6674-1 Fraudulent statement or failure to furnish statement to employee.

For regulations under section 6674, see § 31.6674-1 of this chapter (Employment Tax Regulations).

§ 301.6675-1 Excessive claims with respect to the use of certain gasoline.

For regulations under section 6675, see § 48.6675-1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6676-1 Penalty for failure to supply identifying number.

(a) *In general.* Except as provided in paragraph (c) of this section, if any person who is required by the regulations under section 6109—

(1) To include his identifying number in any return, statement, or other document,

(2) To furnish his identifying number to another person, or

(3) To include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of \$5 for each such failure. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor. Under § 301.6109-1(c) a payer is required to request the identifying number of the payee. If, after such a request has been made, the payee does not furnish the payer with his identifying number, the penalty will not be assessed against the payer.

(b) *Deficiency procedures not to apply.* Subchapter B, chapter 63, of the Code (deficiency procedures) shall not apply in respect of the assessment or collection of the penalty set forth in paragraph (a) of this section.

(c) *Reasonable cause.* If any person who is required by the regulations under section 6109 to supply an identifying number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(d) *Persons required to supply identifying numbers.* For regulations under section 6109 relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

rived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out his duties under subparagraph (A), the Secretary shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Secretary, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a non-citizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Secretary is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Secretary shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual.

(iii) In carrying out the requirements of this subparagraph, the Secretary shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including non-public school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction,

utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after October 4, 1976, be null, void, and of no effect.

(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of subchapter IV of this chapter.

(iv) For purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(3) The Secretary's records shall be evidence for the purpose of proceedings before the Secretary or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Secretary may, if it is brought to his attention that any entry of wages or self-employment income in his records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in his records, as the case may be. After the expiration of the time limitation following any year—

(A) the Secretary's records (with changes, if any, made pursuant to paragraph (5) of this subsection) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this subchapter;

(B) the absence of an entry in the Secretary's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be pre-