

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

[4830-01-p]

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 301**

[TD #####]

**RIN 1545-BN59**

**De Minimis Error Safe Harbor Exceptions to Penalties for Failure to File Correct Information Returns or Furnish Correct Payee Statements**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that treat erroneous payee statements and information returns as correct for certain penalty purposes if the errors are de minimis in amount. These final regulations are necessary because existing regulations do not reflect changes made by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). The final regulations also update dollar amounts, definitions, and references in provisions relating to information return and payee statement penalties, to reflect other statutory enactments which are not accounted for in the existing regulations. The final regulations affect persons required to either file information returns or to furnish payee statements (filers) and recipients of payee statements (payees).

**DATES:** Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Dates: For dates of applicability, see §§1.6045-1(d)(6)(ix) and (q), 301.6721-1(j), 301.6722-1(g), and 301.6724-1(o).

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

**FOR FURTHER INFORMATION CONTACT:** Alexander Wu at (202) 317-6845  
(not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-[TBD].

The collection of information in these final regulations is in §301.6722-1(d)(3)(iii) regarding the payee election, (d)(3)(v)(B) regarding the filer notification, (d)(3)(vii) regarding the payee revocation, and (d)(4) regarding record retention. The information in final regulations §301.6722-1(d)(3)(iii) and (vii) will be used by payees to make and revoke elections and by filers to determine whether they are required to furnish corrected payee statements to payees and file corrected information returns with the IRS to avoid application of penalties under sections 6721 and 6722 of the Internal Revenue Code (the Code). The information under final regulation §301.6722-1(d)(3)(v)(B) will be used to give filers and payees flexibility in establishing reasonable alternative manners for elections. And the information in final regulation §301.6722-1(d)(4) will be used by the IRS to determine whether filers are subject to penalties under sections 6721 and 6722. The collection of information in final regulations §301.6722-1(d)(3)(iii) regarding the payee election, (d)(3)(v)(B) regarding the filer notification, and (d)(3)(vii) regarding the payee revocation is voluntary to obtain a benefit. The collection of information in final regulation §301.6722-1(d)(4) regarding record retention is mandatory. The likely respondents are individuals, state or local governments, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## **Background**

This document contains final regulations in 26 CFR parts 1 and 301 under sections 6045, 6721, 6722, and 6724. The final regulations update and supplement existing regulations relating to information returns and payee statements. In particular, the final regulations implement safe harbor exceptions for de minimis errors on information returns and payee statements, which were enacted as part of the PATH Act. Under sections 6721(c)(3) and 6722(c)(3) of the Code, an error in a dollar amount is de minimis if the difference between any single amount in error and the correct amount does not exceed \$100 and, if the difference is with respect to an amount of tax withheld, the difference is not more than \$25.

On October 17, 2018, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-118826-16) in the **Federal Register**, 83 FR 52726, containing proposed regulations relating to the statutory safe harbor rule for de minimis errors on information returns and payee statements, as well as updating dollar amounts, definitions, and references in provisions relating to

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

information return and payee statement penalties. The proposed regulations were issued following a notice announcing and describing regulations intended to be issued under sections 6721, 6722, and 6724. See Notice 2017-09, 2017-4 I.R.B. 542.

The Treasury Department and the IRS received six written comments on the notice of proposed rulemaking. No public hearing was requested or held. After consideration of the written comments, the proposed regulations are adopted as modified by this Treasury Decision.

### **Summary of Comments and Explanation of Revisions**

All of the written comments on the notice of proposed rulemaking are available at <https://www.regulations.gov> or upon request. Some comments expressed appreciation for the proposed rules. This preamble addresses the substantive comments that disagreed with or requested clarification of the proposed rules.

One comment stated that the proposed regulations “will increase the amount of regulation we have when it comes to 'failure to file cases' in the US.” The comment did not describe how the proposed regulations would increase the amount of regulation applicable to “failure to file cases.” The Treasury Department and the IRS note that the amount of regulation is only one of several factors that must be considered in implementing statutory provisions. The Treasury Department and the IRS further note that the safe harbor is generally intended to provide filers with relief from penalties that would otherwise accrue due to unintentional de minimis errors in reporting information.

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

The comment also requested a more efficient way to furnish correct payee statements. The commentator did not suggest a specific method for furnishing correct payee statements; nevertheless, the method for furnishing correct payee statements is beyond the scope of these regulations. The final regulations therefore do not adopt this comment.

One comment disagreed with providing filers the option to choose whether to correct de minimis errors. The comment also stated that the de minimis threshold was too high, and disagreed with the de minimis error safe harbor applying on a “per security” rather than a “per account” basis. The Treasury Department and the IRS note that Congress has provided filers the option to choose whether to correct de minimis errors, subject to an election by a payee to override this option. Congress has also provided the de minimis thresholds. The final regulations reflect these statutory rules. The Treasury Department and the IRS further note that the statutory de minimis error safe harbor exception applies on a “per statement” basis. Section 6722(c)(3)(A) provides that the de minimis error safe harbor exception applies “with respect to any payee statement.” Further, section 6722(c)(3)(B) provides that the de minimis error safe harbor exception shall not apply if the person to whom such statement is required to be furnished makes an election “with respect to such statement.” To the extent that a statement relates only to a single security, the rule applies, in effect, on a “per security” basis. The statute allows for this outcome, and the final regulations accord with the plain reading of the statute.

One comment reiterated comments submitted prior to the publication of the proposed regulations. This comment suggested that the payee's election to override the safe harbor exception should apply on an account-by-account basis, rather than on a statement-by-statement basis. The comment questioned whether it was Congress's intent to require taxpayers to make separate elections for each payee statement. As stated in the preamble of the notice of proposed rulemaking, the comment's suggested rule would significantly limit a payee's options for making elections and is inconsistent with the statutory framework of sections 6721 through 6724 of the Code, which generally impose a penalty on a per statement (or return) basis. A payee need not decide on elections individually for each payee statement but may elect as to all payee statements or any combination of payee statements, with the election lasting indefinitely by default. As stated in the notice of proposed rulemaking, the Code permits filers to provide corrected statements regardless of the de minimis error safe harbor exceptions or payee election. Thus, Congress was aware that filers could provide corrections on an account-wide basis once a payee made an election with respect to a single type of payee statement associated with that account.

The comment further stated that the proposed rule could cause inconsistencies in basis reporting that are contrary to congressional intent. The comment was specifically concerned with a situation in which a payee would elect to override the safe harbor exception with respect to one form but not another corresponding form. For example, a payee could elect to override the safe harbor exception with respect to a Form 1099-DIV, "Dividends and

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

Distributions,” but not elect to override the safe harbor exception with respect to a corresponding Form 1099-B, “Proceeds From Broker and Barter Exchange Transactions,” potentially resulting in inconsistently reported basis.

The Treasury Department and the IRS amend §1.6045-1(d)(6)(vii) to more clearly address this situation. Under the rule as modified, if a Form 1099-DIV is corrected because a payee elects to override the de minimis error safe harbor exception as applied to the Form 1099-DIV, then the adjusted basis reported on the corresponding Form 1099-B shall be based on and consistent with the corresponding corrected dollar amount shown on the corrected Form 1099-DIV. After taking into account the corrected dollar amount shown on the corrected Form 1099-DIV, Form 1099-B should be corrected if the error on the Form 1099-B is not de minimis. In any event, to avoid inconsistent reporting, the filer can always choose to correct the Form 1099-B, or the payee can elect to override the safe harbor exception with respect to the Form 1099-B.

The Treasury Department and the IRS note that the fact that Congress enacted the de minimis error safe harbors indicates Congress was aware that there might be minor inconsistencies in basis reporting. The Treasury Department and the IRS note that the statutory safe harbor applies only for certain penalty purposes and has no effect on calculating basis under other basis determination sections, such as section 1012.

Another comment requested the payee election be effective only on a prospective basis, citing administrative burden. The Treasury Department and the IRS note that the retrospective application of the election is limited to the



[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

current calendar year. Further, as discussed in the preamble to the notice of proposed rulemaking, while a solely prospective election might reduce administrative burden for some filers, this is but one factor that must be considered. A competing consideration is the flexibility that Congress provided for payees to elect out of the safe harbor. The proposed rules reflect the balancing of these considerations. Thus, the final regulations do not adopt this suggestion.

Two comments requested clarification that the term “tax withheld” in §301.6722-1(d)(2) includes social security, Medicare, and Additional Medicare taxes. The definition in the proposed regulations referenced some of the more common types of taxes withheld, but was not intended to be an exhaustive list of all taxes considered to be “tax withheld.” The use of “includes” in §301.6722-1(d)(2) is based on the definition of “includes” in section 7701(c), which provides that the term “includes” when used in a definition “shall not be deemed to exclude other things otherwise within the meaning of the term defined.” Nevertheless, to resolve any ambiguity as to whether “tax withheld” includes social security, Medicare, and Additional Medicare taxes, the final regulations modify the definition of “tax withheld” in §301.6722-1(d)(2) by adding a reference to section 3102.

One comment requested clarification on whether different taxes withheld and reported separately on an information return or payee statement are considered separately in determining whether the de minimis threshold is reached. To illustrate, the comment asked if errors on an employee’s Form W-2,

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

“Wage and Tax Statement,” in the amounts of \$20 in federal income tax withheld, \$20 in Medicare tax withheld, and \$7.41 in Additional Medicare tax withheld would be considered separately for threshold purposes. The definition of de minimis error in the proposed regulations §301.6722-1(d)(2) refers to “any single amount in error.” Accordingly, if a payee statement does not require taxes withheld to be combined into a single amount for reporting purposes, then each single amount of tax required to be reported separately would be considered separately in determining whether an error is de minimis. The final regulations add §301.6722-1(d)(5)(iv) and (v), which provide examples to illustrate this result. The final regulations also revise §301.6721-0 to renumber the paragraphs in the Table of Contents relating to §301.6722-1(d)(5).

One comment also suggested that additional disclosures be provided in the General Instructions for Forms W-2 and W-3. The comment correctly noted that the de minimis error safe harbor exceptions under sections 6721(c)(3) and 6722(c)(3) apply only for information return and payee statement penalty purposes, and do not apply for other purposes, including the requirement to pay and report employment taxes on Form 941, “Employer’s QUARTERLY Federal Tax Return.” The comment suggested including a note of caution concerning the effect of incorrect information returns on other aspects of tax compliance. The Treasury Department and the IRS will consider revising the General Instructions for Forms W-2 and W-3. The final regulations add §§301.6721-1(e)(5) and 301.6722-1(d)(7), which state that the de minimis error safe harbor exception applies only for information return and payee statement penalty purposes,

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

respectively, and not for other purposes, including requirements to pay and report taxes pursuant to sections other than sections 6721 and 6722. The final regulations also add §301.6721-1(e)(4), which states that a corrected information return may be filed voluntarily if the corresponding payee statement is furnished concurrently, and §301.6722-1(d)(6), which states that a corrected payee statement may be furnished voluntarily if the corresponding information return is filed concurrently, in both cases regardless of whether the de minimis error safe harbor provides an exception for not filing or furnishing the corrected statement.

#### **Effect on Other Documents**

These final regulations under sections 6045, 6721, 6722, and 6724 supersede Notice 2017-09 with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2022.

#### **Special Analyses**

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information contained in these regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. As stated in the preamble to the proposed regulations, these regulations implement the de minimis error safe harbor exceptions in sections 6721(c)(3) and 6722(c)(3) to the sections 6721 and 6722 penalties. Pursuant to section 6722(c)(3)(B), these regulations also provide for the time and manner for elections by payees that the de minimis error safe harbor exceptions not apply, including optional notifications by filers to provide for an alternative reasonable manner for the election. Finally, these regulations provide rules for revocations by payees of elections and record retention rules.

Although these regulations may affect a substantial number of small entities, the economic impact on these entities is not significant. The de minimis error safe harbor exceptions are expected to greatly reduce the burden on filers to file corrected information returns and furnish corrected payee statements because of de minimis errors. In those cases where payees opt to elect that the de minimis error safe harbor exceptions not apply, the expense of making the election will be borne by the payees, which generally will not be small entities.

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

Filers that are small entities receiving elections may incur costs in processing the elections, including initial costs in implementing systems or modifying existing systems to process elections, and subsequently in time incurred administering these systems. However, because section 6722(c)(3)(B) provides for a payee election, such costs flow from the statute regardless of these regulations. Additionally, filers that are small entities generally will have information reporting systems currently in place, and any costs incurred pursuant to these regulations in modifying and implementing those systems are not expected to be significant. These regulations provide clarity regarding the election process, which is expected to result in a more streamlined process.

Similarly, in those cases where payees opt to revoke a prior election, the expense of making the revocation will be borne by the payees, which generally will not be small entities. Filers that are small entities receiving revocations will benefit from the resulting applicability of the de minimis error safe harbor exceptions, resulting in reduced burden to file corrected information returns and furnish corrected payee statements because of de minimis errors. Filers that are small entities receiving revocations may incur costs in processing the revocations similar to those incurred in processing elections; however, it is expected that systems implementing payee elections can be modified with minimal additional cost to account for revocations in addition to elections. Filers that are small entities choosing to provide the optional notification to payees regarding an alternative reasonable manner for making the election may incur costs in providing the notification. However, it is expected that filers will only provide optional notifications when they have determined that any cost in providing the notification is offset by a resulting economic benefit to the filer, such as a more cost-efficient election system. The record retention rules may also increase expenses for filers that are small entities; however, any added expenses are expected to be minimal given existing record retention systems.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comment was received.

#### **Drafting Information**

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

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

### **Statement of Availability**

The IRS Notices and Revenue Procedures cited in this Treasury Decision are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

### **List of Subjects**

#### 26 CFR Part 1

Income taxes.

#### 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 parts 1 and 301 are amended as follows:

#### **PART 1--INCOME TAXES**

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

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

Par. 2. Section 1.6045-1 is amended by:

1. Redesignating paragraph (d)(6)(vii) as paragraph (d)(6)(viii);
2. Adding new paragraph (d)(6)(vii);

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

3. In newly redesignated paragraph (d)(6)(viii), designating Examples 1 through 4 as paragraphs (d)(6)(viii)(A) through (D), respectively;
4. Redesignating newly designated paragraphs (d)(6)(viii)(A)(i) through (iii) as paragraphs (d)(6)(viii)(A)(1) through (3) respectively; and redesignating newly designated paragraphs (d)(6)(viii)(C)(i) and (ii) as paragraphs (d)(6)(viii)(C)(1) and (2) respectively;
5. In newly designated paragraph (d)(6)(viii)(B), removing the language “Example 1” and adding “paragraph (d)(6)(viii)(A)(1) of this section (Example 1)” in its place; and
6. Adding paragraph (d)(6)(ix), and revising paragraphs (k)(4), (l), and (q).

The additions and revisions read as follows:

§1.6045-1 Returns of information of brokers and barter exchanges.

\* \* \* \* \*

(d) \* \* \*

(6) \* \* \*

(vii) Treatment of de minimis errors. For purposes of this section, a customer’s adjusted basis shall generally be determined by treating any incorrect dollar amount which is not required to be corrected by reason of section 6721(c)(3) or section 6722(c)(3) as the correct amount. However if a broker, upon identifying a dollar amount as incorrect, voluntarily or is required to file a corrected information return and furnish the corresponding corrected payee statement showing the correct dollar amount, then regardless of any provision under section 6721 or section 6722, the adjusted basis for purposes of this



[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

section shall be based on and consistent with the correct dollar amount as reported on the corrected information return and corrected payee statement.

\* \* \* \* \*

(ix) Applicability date. Paragraph (d)(6)(vii) of this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2022.

\* \* \* \* \*

(k) \* \* \*

(4) Cross-reference to penalty. For provisions for failure to furnish timely a correct payee statement, see §301.6722-1 of this chapter (Procedure and Administration Regulations). See §301.6724-1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(l) Use of magnetic media. See §301.6011-2 of this chapter for rules relating to filing information returns on magnetic media and for rules relating to waivers granted for undue hardship. A broker or barter exchange that fails to file a Form 1099 on magnetic media, when required, may be subject to a penalty under section 6721 for each such failure. See paragraph (j) of this section.

\* \* \* \* \*

(q) Applicability date. Except as otherwise provided in paragraphs (d)(6) (ix), (m)(2)(ii), and (n)(12)(ii) of this section, and in this paragraph (q), this section applies on or after January 6, 2017. Paragraphs (k)(4) and (l) of this section apply with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2022. (For rules that

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

apply after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016.)

**PART 301--PROCEDURE AND ADMINISTRATION**

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

\* \* \* \* \*

Par. 4. Section 301.6721-0 is amended by--

1. Revising the introductory text to the section;
2. Revising the entries for §§301.6721-1(b)(6) and (d)(4);
3. Redesignating the entries for §§301.6721-1(e), (f), and (g) as entries for §§301.6721-1(f), (g), and (h), respectively;
4. Adding an entry for §301.6721-1(e);
5. Adding entries for §301.6721-1(i) and (j);
6. Adding entries for §301.6722-1(d), (e)(4), (f) and (g);
7. Revising the entry for §301.6724-1(h); and
8. Adding an entry for §301.6724-1(o).

The additions and revisions read as follows:

§301.6721-0 Table of Contents.

In order to facilitate the use of §§301.6721-1 through 301.6724-1, this section lists the paragraph headings contained in these sections.

*§301.6721-1 Failure to file correct information returns.*

\* \* \* \* \*

(b) \* \* \*

(6) Applications to returns not due on January 31, February 28, or March 15.

\* \* \* \* \*

(d) \* \* \*

(4) Nonapplication to returns not due on January 31, February 28, or March 15.

(e) Safe harbor exception for certain de minimis errors.

(1) In general.

(2) Definition of de minimis error.

(3) Election to override the safe harbor exception.

(4) Voluntary corrections.

(5) Limitations on applicability.

\* \* \* \* \*

(i) Adjustment for inflation.

(j) Applicability date.

*§301.6722-1 Failure to furnish correct payee statements.*

\* \* \* \* \*

(d) Safe harbor exception for certain de minimis errors.

(1) In general.

(2) Definition of de minimis error.

(3) Election to override the safe harbor exception.

(4) Record retention.

(5) Examples.

(6) Voluntary corrections.

(7) Limitations on applicability.

(e) \* \* \*

(4) Filer.

(f) Adjustment for inflation.

(g) Applicability date.

\* \* \* \* \*

*§301.6724-1 Reasonable cause.*

\* \* \* \* \*

(h) Reasonable cause safe harbor after election under section 6722(c)(3)(B).

\* \* \* \* \*

(o) Applicability date.

Par. 5. Section 301.6721-1 is amended by:

1. Revising paragraph (a)(1).
2. Revising the ninth sentence of paragraph (a)(2)(ii).
3. Revising paragraphs (b)(1), (2), (5), and (6); and (c)(1), (c)(2)(iii), and introductory paragraph (c)(3).
4. In paragraph (c)(3), designating Examples 1 through 3 as paragraphs (c)(3)(i) through (iii) respectively; and in newly designated paragraph (c)(3)(ii), removing the language “the error” and adding “The error” in its place.
5. Revising paragraph (d).
6. Redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h), respectively.

7. Adding a new paragraph (e).
8. Revising newly redesignated paragraphs (f)(1); (g)(1) and (4) through (6); (h)(1), and (h)(2)(x) and (xi); and adding paragraph (h)(2)(xii).
9. Revising newly redesignated paragraphs (h)(3)(xvii), (xviii), (xxiv), and (xxv); and adding paragraph (h)(3)(xxvi).
10. Revising newly redesignated paragraphs (h)(4) and (6), including deleting the last sentence of paragraph (h)(4).
11. Adding paragraphs (i) and (j).

The revisions and additions read as follows:

§301.6721-1 Failure to file correct information returns.

(a) \* \* \*--

(1) General rule. A penalty of \$250 is imposed for each information return (as defined in section 6724(d)(1) and paragraph (h) of this section) with respect to which a failure (as defined in section 6721(a)(2) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a)(1) with respect to a single information return even though there may be more than one failure with respect to such return. The total amount imposed on any person for all failures during any calendar year with respect to all information returns shall not exceed \$3,000,000. See paragraph (b) of this section for a reduction in the penalty when the failures are corrected within specified periods. See paragraph (c) of this section for an exception to the penalty for inconsequential errors or omissions. See paragraph (d) of this section for an exception to the penalty for a de minimis number of failures. See paragraph (e)

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

of this section for a safe harbor exception for certain de minimis errors. See paragraph (f) of this section for lower limitations to the \$3,000,000 maximum penalty. See paragraph (g) of this section for higher penalties when a failure is due to intentional disregard of the requirement to file timely correct information returns. See paragraph (i) of this section for inflation adjustments to penalty amounts. See §301.6724–1(a)(1) for waiver of the penalty for a failure that is due to reasonable cause.

(2) \* \* \*

(ii) \* \* \* Except as provided in paragraph (c)(1) or (e)(1) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms and form instructions). \* \* \*

(b) \* \* \*--

(1) Correction within 30 days. The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include correct information shall be \$50 in lieu of \$250 if the failure is corrected on or before the 30th day after the required filing date (“within 30 days”). The total amount imposed on a person for all failures during any calendar year that are corrected within 30 days shall not exceed \$500,000.

(2) Correction after 30 days but on or before August 1. The penalty imposed under section 6721(a) for a failure to file timely or for a failure to include

correct information shall be \$100 in lieu of \$250 if the failure is corrected after the 30-day period described in paragraph (b)(1) of this section but on or before August 1 of the year in which the required filing date occurs (“after 30 days but on or before August 1”). See paragraph (b)(6) of this section for an exception to the provisions of this paragraph (b)(2) for returns that are not due on January 31, February 28, or March 15. The total amount imposed on a person for all failures during any calendar year corrected after 30 days but on or before August 1 shall not exceed \$1,500,000.

\* \* \* \* \*

(5) Examples. The provisions of paragraphs (a) and (b)(1) through (4) of this section may be illustrated by the following examples. These examples do not take into account any possible application of the de minimis exception under paragraph (d) of this section, the safe harbor exception for certain de minimis errors under paragraph (e) of this section, the lower small business limitations under paragraph (f) of this section, the penalty for intentional disregard under paragraph (g) of this section, any adjustments for inflation under paragraph (i) of this section, or the reasonable cause waiver under §301.6724-1(a):

(i) Example 1. Corporation R fails to file timely 23,000 Forms 1099-MISC (relating to miscellaneous income) for the 2018 calendar year. Five thousand of these returns are filed with correct information within 30 days, and 18,000 after 30 days but on or before August 1, 2019. For the same year R fails to file timely 400 Forms 1099-INT (relating to payments of interest) which R eventually files on September 28, 2019, after the period for reduction of the penalty has elapsed. R is subject to a penalty of \$100,000 for the 400 forms which were not filed by August 1 ( $\$250 \times 400 = \$100,000$ ), \$1,500,000 for the 18,000 forms filed after 30 days ( $\$100 \times 18,000 = \$1,800,000$ , limited to \$1,500,000 under paragraph (b)(2) of this section), and \$250,000 for the 5,000 forms filed within 30 days ( $\$50 \times 5,000 = \$250,000$ ), for a total penalty of \$1,850,000.

(ii) Example 2. Corporation T fails to file timely 14,000 Forms 1099–MISC for the 2018 calendar year. T files the 14,000 Forms 1099–MISC on September 1, 2019. Because T does not correct the failure by August 1, 2019, T is subject to a penalty of \$3,000,000, the maximum penalty under paragraph (a) of this section. Without the limitation of paragraph (a) of this section, T would be subject to a \$3,500,000 penalty ( $\$250 \times 14,000 = \$3,500,000$ ).

(iii) Example 3. Corporation U files timely 300 Forms 1099–MISC on paper for the 2018 calendar year with correct information. Under §301.6011-2(c)(1) (as that section applies to persons required to file certain information returns during calendar year 2019), a person required to file at least 250 returns during calendar year 2019 must file those returns on magnetic media. U does not correct its failures to file these returns on magnetic media by August 1, 2019. It is therefore subject to a penalty for a failure to file timely under paragraph (a)(2) of this section. However, pursuant to section 6724(c) and paragraph (a)(2) of this section, the penalty for a failure to file timely on magnetic media during calendar year 2019 applies only to the extent the number of returns exceeds 250. As U was required to file 300 returns on magnetic media, U is subject to a penalty of \$12,500 for 50 returns ( $\$250 \times 50 = \$12,500$ ).

(iv) Example 4. Corporation V files 300 Forms 1099–B (relating to proceeds from broker and barter exchange transactions) on paper for the 2018 calendar year. The forms were filed on March 15, 2019, rather than on the required filing date of February 28, 2019. Under §301.6011-2(c)(1) (as that section applies to persons required to file certain information returns during calendar year 2019), a person required to file at least 250 returns during calendar year 2019 must file those returns on magnetic media. V does not correctly file these returns on magnetic media by August 1, 2019. V is subject to a penalty of \$12,500 for filing 250 of the returns late ( $\$50 \times 250$ ) and \$12,500 for failing to file 50 returns on magnetic media ( $\$250 \times 50$ ) for a total penalty of \$25,000.

(6) Application to returns not due on January 31, February 28, or March 15. For returns that are not due on January 31, February 28, or March 15 (for example, Forms 8300 reporting certain cash payments of \$10,000 or more), the penalty is \$50 if the failure is corrected within 30 days. If the failure is corrected after 30 days, the penalty is \$250 rather than \$100. There is no period during which the penalty is reduced to \$100 under paragraph (b)(2) of this section.

(c) \* \* \*--



(1) In general. An inconsequential error or omission is not considered a failure to include correct information. For purposes of this paragraph (c)(1), the term “inconsequential error or omission” means any failure that does not prevent or hinder the Internal Revenue Service from processing the return, from correlating the information required to be shown on the return with the information shown on the payee’s tax return, or from otherwise putting the return to its intended use. See paragraph (h)(5) of this section for the definition of “payee.”

(2) \* \* \*

(iii) Any monetary amounts, except as provided in paragraph (e) of this section. The Internal Revenue Service may, by administrative pronouncement, specify other types of errors or omissions that are never inconsequential.

(3) Examples. The provisions of this paragraph (c) may be illustrated by the following examples, which do not take into account any possible application of the penalty for intentional disregard under paragraph (g) of this section or the reasonable cause waiver under §301.6724–1(a):

\* \* \* \* \*

(d) Exception for a de minimis number of failures--(1) Requirements. The penalty under paragraph (a) of this section is not imposed for a de minimis number of failures to include correct information if the filer corrects such failures on or before August 1 of the year in which the required filing date occurs. See paragraph (d)(4) of this section for special rules relating to returns that are not due on January 31, February 28, or March 15.

(2) Calculation of the de minimis exception. The number of returns to which the de minimis exception applies for any calendar year shall not exceed the greater of 10 or one-half of one percent of the total number of all information returns the filer is required to file during the year. If the number of returns on which the filer fails to include correct information exceeds the number of returns to which the de minimis exception applies, the de minimis exception applies to those returns that will afford the filer the greatest reduction in penalty. The de minimis exception applies to failures to include correct information that exist after the application (if any) of the safe harbor exception for certain de minimis errors under paragraph (e) of this section and after the application (if any) of the waiver for reasonable cause under section 6724(a) and §301.6724–1. Returns to which the de minimis exception applies are treated as having been originally filed with correct information.

(3) Examples. The provisions of this paragraph (d) may be illustrated by the following examples. In each of the examples, the failures to file and to include correct information are subject to penalty under paragraph (a) of this section. The examples do not take into account any possible application of the safe harbor exception for certain de minimis errors under paragraph (e) of this section, the lower small business limitations under paragraph (f) of this section, the penalty for intentional disregard under paragraph (g) of this section, any adjustment for inflation under paragraph (i) of this section, or the reasonable cause waiver under §301.6724–1(a).

(i) Example 1. Corporation T files timely 10,000 Forms 1099–INT (relating to payments of interest) for 2018 by February 28, 2019. The 10,000 returns are

all the information returns that T is required to file during the 2019 calendar year. Of the returns filed, 70 contained incorrect information. T corrects the failures on July 12, 2019. No penalty is imposed for 50 of the failures (that is, the greater of 10 or  $.005 \times 10,000 = 50$ ) even though the total failures, 70, exceed the number to which the de minimis exception may apply. The \$100 penalty under paragraph (b)(2) of this section is imposed, in lieu of \$250, for the remaining 20 failures, which were corrected after 30 days but on or before August 1, resulting in a total penalty of \$2000 ( $\$100 \times 20 = \$2000$ ).

(ii) Example 2. Corporation U files timely 9,500 Forms 1099–INT for 2018 by February 28, 2019. Fifty of these returns contain incorrect information with respect to which U files correct information on August 1, 2019. U also files 500 Forms 1099–INT for 2018 on August 30, 2019, after the required filing date. The 10,000 returns are all the information returns that U is required to file during the 2019 calendar year. The calculation of the de minimis exception is based on the 10,000 returns required to be filed during the 2019 calendar year even though 500 of the returns filed during the year were not filed timely. Therefore, the number of failures for which the de minimis exception applies is 50, and accordingly no penalty is imposed for the 50 Forms 1099–INT that were corrected on August 1, 2019. However, the \$250 penalty under paragraph (a)(1) of this section is imposed for each failure to file timely (that is, the de minimis exception does not apply to this penalty for failure to file timely), resulting in a total penalty of \$125,000 ( $\$250 \times 500 = \$125,000$ ).

(iii) Example 3. Corporation V files timely 9,950 Forms 1099–INT for 2018 by February 28, 2019. However, V fails to file timely 50 of its Forms 1099–INT. The 10,000 returns are all the information returns that V is required to file during the 2019 calendar year. Upon discovering the error, V files the 50 returns within 30 days of February 28, 2019. The 50 returns are complete and correct except that V fails to include the taxpayer identification numbers of the payees on the returns. V files corrected returns on August 1, 2019. Absent application of the de minimis exception, the penalty imposed for the failure to include correct information would be \$5,000 ( $\$100 \times 50 = \$5,000$ ). Because the incorrect returns are corrected on August 1, the 50 forms are treated under the de minimis exception as originally filed with correct information, and therefore no penalty is imposed under paragraph (a) of this section for the failure to include correct information. Nevertheless, the penalty under paragraph (a) of this section is imposed for the failure to file timely the 50 returns because the de minimis exception does not apply to the penalty for the failure to file timely. Hence, a penalty of \$2,500 ( $\$50 \times 50 = \$2500$ ) is imposed.

(iv) Example 4. Corporation W files timely 100 Forms 1099–DIV and files an additional 50 Forms 1099–DIV late, but within 30 days of February 28, 2019. These are all the information returns that W was required to file during the 2019 calendar year. W discovers errors on 10 of the returns that were filed timely, and on 5 of the returns that were filed late. W corrects all the errors on August 1. The

de minimis exception applies to 10 of the corrected returns. The exception will be allocated to the 10 returns that were filed timely with incorrect information, because that allocation is most favorable to W (that is, applying the exception to a return filed late with incorrect information would save W \$50, by reducing the penalty on that return from \$100 to \$50, but applying the exception to a return filed timely would save W \$100, by reducing the penalty on that return from \$100 to \$0). (See paragraph (b)(4) of this section.)

(4) Nonapplication to returns not due on January 31, February 28, or March 15. The exception for a de minimis number of failures provided in paragraph (d)(1) of this section does not apply to failures with respect to returns that are not due on January 31, February 28, or March 15 (for example, Forms 8300 reporting certain cash payments of \$10,000 or more). Nevertheless, the returns that are not due on January 31, February 28, or March 15 are included in the total number of all information returns that the filer is required to file during a year for purposes of calculating the number of the returns subject to the de minimis exception under paragraph (d)(2) of this section.

(e) Safe harbor exception for certain de minimis errors--(1) In general. Except as provided in paragraph (e)(3) or (g)(4) of this section, the penalty under section 6721(a) and paragraph (a) of this section is not imposed for a failure described in section 6721(a)(2)(B) and paragraph (a)(2)(ii) of this section (failure to include correct information on information return) when the failure relates to an incorrect dollar amount and is a de minimis error. When this safe harbor applies to an information return and the information return was otherwise correct and timely filed, no correction is required and, for purposes of this section, the information return is treated as having been filed with all of the correct required information.

(2) Definition of de minimis error. For the definition of de minimis error, see §301.6722-1(d)(2).

(3) Election to override the safe harbor exception. The safe harbor exception provided for by paragraph (e)(1) of this section does not apply to any information return if the incorrect dollar amount that would qualify as a de minimis error for purposes of this paragraph (e) relates to an amount with respect to which an election has been made (and has not been revoked) under section 6722(c)(3)(B) and §301.6722-1(d)(3). See §301.6722-1(d)(3) for additional rules relating to the election under section 6722(c)(3)(B) and §301.6722-1(d)(3), including rules relating to the revocation of the election and the inapplicability of the election to certain information. See §301.6724-1(h) for rules relating to waiver of the section 6721 penalty in cases where the safe harbor exception provided for by paragraph (e)(1) of this section does not apply because of an election under §301.6722-1(d)(3).

(4) Voluntary corrections. Regardless of whether the de minimis error safe harbor provides an exception for not filing a particular corrected information return, the corrected information return may be filed voluntarily if a corresponding payee statement reflecting the information shown on the corrected information return is concurrently furnished to the payee.

(5) Limitations on applicability. The safe harbor exception provided for by paragraph (e)(1) of this section applies only for the purposes of information return penalties under section 6721. Accordingly, this safe harbor exception applies to the reporting of the withholding of tax on information returns, but it does not apply

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

for purposes of any underlying requirements to withhold or pay tax. Interest, penalties, and other additions to tax may be imposed under other sections for under-withholding or underpaying tax in any amount.

(f) \* \* \*--

(1) In general. If a person meets the gross receipts test (as defined in paragraph (f)(2) of this section) for any calendar year, the total amount of the penalty imposed on the person for all failures described in section 6721(a)(2) and paragraph (a)(2) of this section during the calendar year shall not exceed \$1,000,000. The total amount of the penalty imposed under paragraph (b)(1) of this section for failures corrected within 30 days shall not exceed \$175,000 for the calendar year. The total amount of the penalty imposed under paragraph (b)(2) of this section for failures corrected after 30 days but on or before August 1 shall not exceed \$500,000 for the calendar year.

\* \* \* \* \*

(g) \* \* \*--

(1) Application of section 6721(e). If a failure is due to intentional disregard of the requirement to file timely or to include correct information on a return as described in paragraph (h) of this section, the amount of the penalty imposed under paragraph (a) of this section shall be determined under paragraph (g)(4) of this section.

\* \* \* \* \*

(4) Amount of the penalty. If one or more failures to file timely or to include correct information are due to intentional disregard of the requirement to

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

file timely or to include correct information, then, with respect to each failure determined under this paragraph (g)—

(i) Paragraphs (b), (d), (e), and (f) of this section shall not apply;

(ii) The \$3,000,000 limitation under paragraph (a) of this section shall not apply, and the penalty under this paragraph (g) shall not be taken into account in applying the \$3,000,000 limitation (or any similar limitation under paragraph (b) or (f) of this section) to penalties not determined under this paragraph (g);

(iii) The penalty imposed under paragraph (a) of this section shall be \$500 or, if greater, the statutory percentage; and

(iv) The term “statutory percentage” means—

(A) In the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, 6050I, 6050J, 6050K, 6050L, or 6050V, 10 percent of the aggregate dollar amount of the items required to be reported correctly;

(B) In the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate dollar amount of the items required to be reported correctly;

(C) In the case of a return required to be filed under section 6050I(a), for any transaction (or related transactions), the greater of \$25,000 or the amount of cash (within the meaning of section 6050I(d)) received in such transaction to the extent the amount of such cash does not exceed \$100,000; or

(D) In the case of a return required to be filed under section 6050V, 10 percent of the value of the benefit of any contract with respect to which information is required to be included on the return.

(5) Computation of the penalty; aggregate dollar amount of the items required to be reported correctly. The aggregate dollar amount used in computing the penalty under this paragraph (g) is the amount that is not reported or is reported incorrectly. If the intentional disregard relates to a dollar amount, the statutory percentage is applied to the difference between the dollar amount reported and the amount required to be reported correctly. If the intentional disregard relates to any other item on the return, the statutory percentage is applied to the aggregate amount of items required to be reported correctly. In determining the aggregate amount of items required to be reported correctly, no item shall be taken into account more than once. For example, if a filer willfully fails to file a Form 1099–INT on which \$800 of interest and \$160 of Federal income tax withheld (that is, backup withholding) is required to be reported, only the \$800 amount is taken into account in computing the penalty.

(6) Examples. The provisions of this paragraph (g) may be illustrated by the following examples, which do not take into account any adjustments for inflation under paragraph (i) of this section:

(i) Example 1. On December 1, 2018, Automobile dealer P receives \$55,000 from an individual for the purchase of an automobile in a transaction subject to reporting under section 6050I. The individual presents documents to P that identify him as “John Doe.” However, P completes the Form 8300 (relating to cash received in a trade or business) and reflects the name of a cartoon character as the filer. Because P knew at the time of filing the Form 8300 that the filer’s name was not the name of the cartoon character, he willfully failed to include correct information as described under paragraph (g)(2) of this section. Therefore, the penalty under paragraph (g)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (g)(5) of this section is \$55,000 (that is, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (g)(4)(iv)(C) of this section is \$55,000 (that is, the



greater of \$25,000 or the amount of cash received in the transaction up to \$100,000).

(ii) Example 2. On December 1, 2018, Individual B contacts his agent, F, to act as his intermediary in the purchase of an automobile. B gives F \$20,000 and requests F to purchase the automobile in F's name, which F does. F prepares the Form 8300 as required under section 6050I, but in the area designated for the name of the filer, F writes "confidential." Because F knew at the time the return was filed that it contained incomplete information, the penalty under paragraph (g)(4) of this section is imposed for the intentional disregard of the requirement to include correct information. The amount used in computing the penalty under paragraph (g)(5) of this section is \$20,000 (that is, the amount required to be reported on the return with respect to which the payee is not correctly identified). The amount of the penalty determined under paragraph (g)(4)(iv)(C) of this section is \$25,000 (that is, the greater of \$25,000 or the amount of cash received in the transaction up to \$100,000).

(iii) Example 3. Corporation M deliberately does not include \$5,000 of dividends on a Form 1099-DIV (relating to payments of dividends) on which a total of \$200,000 (including the \$5,000 dividends) is required to be reported under section 6042(a). Because the failure was deliberate, Corporation M's failure is due to intentional disregard of the requirement to include correct information. Accordingly, the amount of the penalty imposed under paragraph (a) of this section is determined under paragraph (g)(4) of this section. Because the Form 1099-DIV is required to be filed under section 6042(a), under paragraph (g)(4)(iv)(A) the amount of the penalty with respect to such failure is 10 percent of the aggregate dollar amount of the items that were required to be but that were not reported correctly. Under paragraph (g)(5) of this section, \$5,000 is the difference between the dollar amount reported and the amount required to be reported correctly. Therefore, the amount of the penalty is \$500 ( $\$5,000 \times 0.10 = \$500$ ).

(iv) Example 4. Form 8027 requires certain large food and beverage establishments to report certain information with respect to tips. The form requires (among other things) that the establishment report its gross receipts from food and beverage operations. Establishment A, in intentional disregard of the information reporting requirement, reported gross receipts of \$1,000,000, when the correct amount was \$1,500,000. The significance of the gross receipts reporting requirement is that section 6053(c)(3)(A) requires an establishment to allocate as tips among its employees the excess of 8 percent of its gross receipts over the aggregate amount reported by employees to the establishment as tips under section 6053(a). A's misstatement of its gross receipts caused A to show \$80,000 on the Form 8027 as 8 percent of its gross receipts, rather than the correct amount of \$120,000. A correctly reported the amount of tips reported to it by employees under section 6053(a) as \$80,000. Thus, A reported the excess of 8 percent of its gross receipts over tips reported to it as zero, rather than as the

correct amount of \$40,000. The requirement of reporting gross receipts is considered merely a step in the computation of the excess of 8 percent of gross receipts over tips reported to A under section 6053(a), so that the penalty for intentional disregard will be \$4,000 (that is, 10 percent of the difference between the \$40,000 required to be reported as the excess of 8 percent of gross receipts over tips reported under section 6053(a), and the zero amount actually reported).

(h) \* \* \*--

(1) Information return. For purposes of this section, the term “information return” has the same meaning as “information return” as defined in section 6724(d)(1), including any statement described in paragraph (h)(2) of this section, any return described in paragraph (h)(3) of this section, and any other items described in paragraph (h)(4) of this section.

(2) \* \* \*

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099-R, “Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.”);

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099–R); or

(xii) Section 6035 (relating to basis information with respect to property acquired from decedents, generally Form 8971, “Information Regarding Beneficiaries Acquiring Property From a Decedent” and the Schedule(s) A required to be filed along with it).

(3) \* \* \*

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594,

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

“Asset Acquisition Statement”), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities);

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils);

\* \* \* \* \*

(xxiv) Section 6055 (relating to information returns reporting minimum essential coverage);

(xxv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members); or

(xxvi) Section 6050Y (relating to returns relating to certain life insurance contract transactions).

(4) Other items. The term information return also includes any form, statement, or schedule required to be filed with the Internal Revenue Service under chapter 4 or with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), including but not limited to Form 1042–S, “Foreign Person’s U.S. Source Income Subject to Withholding,” or Form 8805, “Foreign Partner’s Information Statement of Section 1446 Withholding Tax.”

\* \* \* \* \*

(6) Filer. For purposes of this section the term “filer” means a person that is required to file an information return as defined in paragraph (h)(1) of this

section under the applicable information reporting section described in paragraphs (h)(2) through (4) of this section.

(i) Adjustment for inflation. Each of the dollar amounts under paragraphs (a), (b), (f) (other than (f)(2)), and (g) of this section and section 6721(a), (b), (d) (other than section 6721(d)(2)(A)), and (e) shall be adjusted for inflation pursuant to section 6721(f).

(j) Applicability date. This section applies with respect to information returns required to be filed on or after January 1, 2022.

Par. 6. Section 301.6722-1 is amended by:

1. Revising paragraphs (a)(1), (a)(2)(ii), and (b)(2)(i).
2. In paragraphs (b)(2)(ii) and (iii), removing the comma at the end of each paragraph and adding a semicolon in its place.
3. Revising paragraph (b)(3) introductory text.
4. In paragraph (b)(3), designating Examples 1 and 2 as paragraphs (b)(3)(i) and (ii), and in newly designated paragraph (b)(3)(ii), removing the language “Example 1” and adding “paragraph (d)(3)(i) of this section (Example 1)” in its place.
5. Revising paragraph (c)(1).
6. Redesignating paragraphs (c)(2)(i), (ii), and (iii) as paragraphs (c)(2)(ii), (iii), and (iv).
7. Adding a new paragraph (c)(2)(i).
8. Revising newly redesignated paragraphs (c)(2)(ii) and (iii).
9. Redesignating paragraphs (d) and (e) as paragraphs (e) and (g).

10. Adding a new paragraph (d).
11. Revising newly redesignated paragraphs (e)(1), (e)(2) introductory text, and (e)(2)(xxxiii) and (xxxiv).
12. In newly designated paragraph (e)(3), adding the language “or chapter 4” after the language “chapter 3”, removing the language “generally” and adding the language “including but not limited to” in its place, and removing the language “subject” and adding the language “Subject” in its place.
13. Adding paragraphs (e)(2)(xxxv), (xxxvi), and (xxxvii), (e)(4), and (f).
14. Revising newly redesignated paragraph (g).

The revisions and additions read as follows:

§301.6722-1 Failure to furnish correct payee statements.

(a) \* \* \*--

(1) General rule. A penalty of \$250 is imposed for each payee statement (as defined in section 6724(d)(2) and paragraph (e)(2) of this section) with respect to which a failure (as defined in section 6722(a) and paragraph (a)(2) of this section) occurs. No more than one penalty will be imposed under this paragraph (a) with respect to a single payee statement even though there may be more than one failure with respect to such statement. However, the penalty shall apply to failures on composite substitute payee statements as though each type of payment and other required information were furnished on separate statements. A “composite substitute payee statement” is a single document created by a filer to reflect several types of payments made to the same payee.

The total amount imposed on any person for all failures during any calendar year with respect to all payee statements shall not exceed \$3,000,000. See section 6722(e) and paragraph (c) of this section for higher penalties when a failure is due to intentional disregard of the requirement to furnish timely correct payee statements. See paragraph (d) of this section for a safe harbor exception for certain de minimis errors. See paragraph (f) of this section for inflation adjustments to penalty amounts. See §301.6724–1(a)(1) for a waiver of the penalty for a failure that is due to reasonable cause.

(2) \* \* \*

(ii) A failure to include all of the information required to be shown on a payee statement or the inclusion of incorrect information (“failure to include correct information”). A failure to furnish timely includes a failure to furnish a written statement to the payee in a statement mailing as required under sections 6042(c), 6044(e), 6049(c), and 6050N(b), as well as a failure to furnish the statement on a form acceptable to the Internal Revenue Service. Except as provided in paragraph (b) or (d) of this section, a failure to include correct information encompasses a failure to include the information required by applicable information reporting statutes or by any administrative pronouncements issued thereunder (such as regulations, revenue rulings, revenue procedures, or information reporting forms).

(b) \* \* \*

(2) \* \* \*

(i) A dollar amount, except as provided in paragraph (d) of this section;

\* \* \* \* \*

(3) Examples. The provisions of this paragraph (b) may be illustrated by the following examples which do not take into account any possible application of the penalty for intentional disregard under paragraph (c) of this section, the safe harbor exception for certain de minimis errors under paragraph (d) of this section, or the reasonable cause waiver under §301.6724-1(a):

\* \* \* \* \*

(c) \* \* \*--

(1) Application of section 6722(e). If a failure is due to intentional disregard of the requirement to furnish timely correct payee statements, the amount of the penalty shall be determined under paragraph (c)(2) of this section. Whether a failure is due to intentional disregard of the requirement to furnish timely correct payee statements is based upon the facts and circumstances surrounding the failure. The facts and circumstances considered include those under §301.6721-1(g)(3), which shall apply in determining whether a failure under this section is due to intentional disregard.

(2) \* \* \*

(i) Paragraph (d) of this section shall not apply;

(ii) The \$3,000,000 limitation under paragraph (a) of this section shall not apply and the penalty under this paragraph (c)(2) shall not be taken into account in applying the \$3,000,000 limitation to penalties not determined under this paragraph (c)(2);

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

(iii) The penalty imposed under paragraph (a) of this section shall be \$500 or, if greater, the statutory percentage; and

\* \* \* \* \*

(d) Safe harbor exception for certain de minimis errors--(1) In general.

Except as provided in paragraphs (c) and (d)(3) of this section, the penalty under section 6722(a) and paragraph (a) of this section is not imposed for a failure described in section 6722(a)(2)(B) and paragraph (a)(2)(ii) of this section (failure to include correct information on payee statement) when the failure relates to an incorrect dollar amount and is a de minimis error. When this safe harbor applies to a payee statement and the payee statement was otherwise correct and timely furnished no correction is required and, for purposes of this section, the payee statement is treated as having been furnished with all of the correct required information.

(2) Definition of de minimis error. For purposes of paragraph (d) of this section, an error in a dollar amount is de minimis if the difference between any single amount in error and the correct amount is not more than \$100, and, if the difference is with respect to an amount of tax withheld, it is not more than \$25. For purposes of this paragraph (d)(2), tax withheld includes any amount required to be shown on an information return or payee statement (as defined in section 6724(d)(1) and (2), respectively) withheld under section 3102 or section 3402, as well as any such amount required to be shown on such an information return or payee statement that is creditable under sections 27, 31, 33, or 1474.



(3) Election to override the safe harbor exception--(i) In general. Except as provided in paragraphs (d)(3)(vi) and (vii) of this section, the safe harbor exception provided for by this paragraph (d) does not apply to any payee statement if the person to whom the statement is required to be furnished (the payee) makes an election that the safe harbor not apply with respect to the statement.

(ii) Timing of election. The payee must elect no later than the later of 30 days after the date on which the payee statement is required to be furnished to the payee, or October 15 of the calendar year, to receive a correct payee statement required to be furnished in that calendar year without having the safe harbor under paragraph (d)(1) of this section apply. The date of an election is the date the election is received by the filer. For purposes of this section, the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date an election is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under such section. The election shall remain in effect for all subsequent years unless revoked under paragraph (d)(3)(vii) of this section.

(iii) Manner for making the election. Except as provided in paragraph (d)(3)(v) of this section, the payee must make the election by delivering the election in writing to the filer. Except as provided in paragraph (d)(3)(v) of this section, the written election must be made in writing on paper. The payee may deliver the election in person, by mail by United States Postal Service, or by a designated delivery service as defined under section 7502(f)(2). If the filer has

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

not otherwise provided an address under paragraph (d)(3)(v) of this section, the payee shall send the written election to the filer's address appearing on the payee statement furnished by the filer to the payee with respect to which the election is being made or as directed by that person upon appropriate inquiry by the payee. The written election must:

(A) Clearly state that the payee is making the election;

(B) Provide the payee's name, address, and taxpayer identification number (TIN) (as defined in section 7701(a)(41) of the Internal Revenue Code) to the filer;

(C) If the payee wants the election to apply only to specific types of statements, identify the type of payee statement(s) and account number(s), if applicable, to which the election applies (for example, Form 1099-DIV, "Dividends and Distributions"); and

(D) Provide any other information required by the Internal Revenue Service in forms, instructions, or publications.

(iv) Payee statements to which the election applies. An election by a payee under paragraph (d)(3)(i) of this section applies to all types of payee statements the filer is required to furnish to the payee, unless the payee specifies otherwise on the election under paragraph (d)(3)(iii)(C) of this section.

(v) Reasonable alternative manner for making the election in cases of notification by the filer--(A) In general. If the filer satisfies the requirements of paragraph (d)(3)(v)(B) of this section, and provides for a reasonable alternative manner as described in paragraph (d)(3)(v)(E) of this section, a payee may

decide to make the election under paragraph (d)(3)(i) of this section pursuant to that reasonable alternative manner.

(B) Notification of payee of reasonable alternative manner for making election. The filer may elect to provide notification to the payee of a reasonable alternative manner to make the election under paragraph (d)(3)(i) of this section, as described in paragraph (d)(3)(v)(E) of this section. To provide a valid notification under this paragraph (d)(3)(v)(B), the filer must provide notification to the payee that:

(1) Is in writing (either on paper or in electronic format);

(2) Is timely provided to the payee under paragraph (d)(3)(v)(D) of this section;

(3) Explains to the payee to whom that filer is required to furnish a payee statement of the payee's ability to elect, under paragraph (d)(3)(i) of this section, that the safe harbor exceptions for de minimis errors not apply, and of the payee's ability to choose to make the election using the default method under paragraph (d)(3)(iii) of this section;

(4) Provides an address to which the payee may send an election under paragraphs (d)(3)(i) and (iii) of this section;

(5) Provides any reasonable alternative manner or manners, as described in paragraph (d)(3)(v)(E) of this section, that the filer is making available for the payee to make the election under paragraph (d)(3)(i) of this section; and

(6) Describes the information required for making the election described by paragraphs (d)(3)(iii)(A) through (D) of this section. Solely for purposes of the

reasonable alternative manner, the notification may provide that some or all of the information described in paragraph (d)(3)(iii)(B) of this section is not required and may provide that the provision of an account number as referenced in paragraph (d)(3)(iii)(C) of this section is required if the payee decides to use the reasonable alternative manner for the election.

(C) Notification of revocation procedures. A notification under this paragraph (d)(3)(v) may also provide the procedures for making a revocation of an election under paragraph (d)(3)(vii) of this section. Solely for purposes of the reasonable alternative manner, the notification may provide that some or all of the information described in paragraph (d)(3)(vii)(B) of this section is not required and may provide that the provision of an account number as referenced in paragraph (d)(3)(vii)(E) of this section is required if the payee decides to use a reasonable alternative manner for making a revocation.

(D) Time for providing notification of reasonable alternative manner for making payee election. A notification under this paragraph (d)(3)(v) will be timely under paragraph (d)(3)(v)(B)(2) of this section if:

(1) The notification is provided with, or at the time of, the furnishing of the payee statement; or

(2) The filer previously provided a valid notification under paragraph (d)(3)(v) of this section to the payee with, or at the time of, the furnishing of a payee statement associated with a particular account, in which case notification will be considered to have been timely provided with respect to subsequent payee statements associated with that particular account. If the filer wishes to provide

for a different reasonable alternative manner than a previous reasonable alternative manner, the filer must provide new notification in compliance with the timeliness rule of paragraph (d)(3)(v)(D)(1) of this section, and must accept payee elections under the previous reasonable alternative manner for a period of at least 60 days after the receipt of the new notification by the payee.

(E) Reasonable alternative manner. A reasonable alternative manner described in a notification under paragraph (d)(3)(v)(B) of this section may include that a payee election under paragraph (d)(3)(i) of this section may be made electronically (for example, via email or website) or telephonically. The reasonable alternative manner may not impose any prerequisite, condition, or time limitation on, or otherwise limit, the payee's ability to make an election under paragraph (d)(3)(iii) of this section, except as described in paragraphs (d)(3)(ii) and (iii) of this section; it may only offer a reasonable alternative manner or manners for making this election under this paragraph (d)(3)(v).

(vi) Election not available for certain information. The election to override the safe harbor exception provided for by paragraph (d)(3)(i) of this section is not available with respect to information that may not be altered under specific information reporting rules. See, for example, §1.6045-4(i)(5) of this chapter.

(vii) Revocation of election. The payee may revoke a prior election by submitting a revocation to the filer. The effect of a revocation of a prior election is that the safe harbor for certain de minimis errors will apply to the payee statements that the payee identifies and that are furnished or are due to be furnished after the revocation is received. The revocation will remain in effect

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

until the payee makes a valid and timely election under paragraph (d)(3)(i) of this section. The date of a revocation is the date the revocation is received by the filer. For purposes of this section, the provisions of section 7502 relating to timely mailing treated as timely delivery apply in determining the date a revocation is considered to be received by the filer, treating delivery to the filer as if the filer were an agency, officer, or office under such section. The revocation must be made in the same manner or manners described for making the election, that is pursuant to either paragraph (d)(3)(iii) or (v) of this section, as the payee chooses if paragraph (d)(3)(v) of this section is applicable. Except as provided under paragraph (d)(3)(v)(B)(6) of this section, the revocation must:

- (A) Clearly state that the payee is revoking the payee's prior election;
- (B) Provide the payee's name, address, and TIN to the filer;
- (C) Provide the name of the filer;
- (D) Identify the type of payee statement(s) (for example, Form 1099-DIV)

to which the revocation applies;

(E) Identify the account number(s), if applicable, to which the revocation applies; and

(F) Provide any other information required by the Internal Revenue Service in forms, instructions or publications.

(viii) Reasonable cause. See §301.6724-1(h) for rules relating to waiver of the section 6722 penalty in cases where the safe harbor exception provided for by paragraph (d)(1) of this section does not apply because of an election under paragraph (d)(3)(i) of this section.

(4) Record retention. To facilitate proof of compliance with reporting and other obligations under the internal revenue laws, filers must retain records of any election or revocation by the payee under paragraph (d)(3)(i) or (vii) of this section, respectively, and any notification made under paragraph (d)(3)(v) of this section for as long as the contents of the election, revocation, or notification may be material in the administration of any internal revenue law. For rules regarding record retention, see section 6001 and §1.6001-1 of this chapter. For additional procedures applicable to record retention in the context of electronic storage, see Rev. Proc. 97-22, 1997-1 C.B. 652, Rev. Proc. 98-25, 1998-1 C.B. 689, and any subsequently published guidance.

(5) Examples. The provisions of paragraphs (d)(1) through (4) of this section may be illustrated by the following examples, which do not address any possible application of the penalty for intentional disregard under paragraph (c) of this section or the reasonable cause waiver under §301.6724-1(a):

(i) Example 1. (A) Filer W is required to file with the IRS by February 28, 2022, and furnish to Payee A by February 15, 2022, Form 1099-B “Proceeds From Broker and Barter Exchange Transactions,” because Filer W is a broker who sold stocks on behalf of Payee A resulting in proceeds of \$5000 during calendar year 2021. Filer W properly withheld an amount of \$1736 under applicable backup withholding rules because Payee A failed to furnish Payee A’s TIN to Filer W. On the Form 1099-B, Filer W reports as follows: Box 1d, Proceeds, \$4900; and Box 4, Federal income tax withheld, \$1761. Filer W otherwise correctly and timely files and furnishes the Form 1099-B. Payee A does not make an election under paragraph (d)(3)(i) of this section.

(B) The safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section applies, because the differences between each of the amounts reported in error and the correct amounts are not more than the applicable limits. The error in the dollar amount reported in Box 1d, Proceeds, is de minimis because the difference between the amount in error (\$4900) and the correct amount (\$5000) is not more than \$100; it is exactly \$100. The error in the dollar amount reported in Box 4, Federal income tax withheld, is de minimis

because the \$25 difference between the amount in error (\$1761) and the correct amount (\$1736) is not more than \$25, the limit for an error with respect to an amount reported for tax withheld.

(ii) Example 2. (A) The facts are the same as in Example 1 in paragraph (d)(5)(i)(A) of this section, except that Filer W reports \$1710 as the amount in Box 4, Federal income tax withheld.

(B) The safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section does not apply because the Form 1099-B contains a failure that is not a de minimis error. The difference between the amount in error (\$1710) and the correct amount (\$1736) is \$26, which is more than the \$25 limit for de minimis errors with respect to an amount reported for tax withheld.

(iii) Example 3. (A) In 2022, Filer X provides Payee B with valid notification of a reasonable alternative manner under paragraph (d)(3)(v) of this section for making the payee election under paragraph (d)(3)(i) of this section. Payee B timely elects pursuant to the reasonable alternative manner during 2022. Payee B elects with respect to all payee statements that Filer X is required to furnish to Payee B. In January 2023, Filer X decides to provide for a different, but also valid, reasonable alternative manner; Filer X provides notification of this different reasonable alternative manner to Payee B, and Payee B receives notification of this different reasonable alternative manner, pursuant to paragraph (d)(3)(v)(B) of this section, on January 16, 2023.

(B) Payee B decides to revoke Payee B's prior election, with respect to the Forms 1099-DIV that Filer X is required to furnish to Payee B. Under paragraph (d)(3)(vii) of this section, Payee B may provide the revocation to Filer X in any of three different manners. First, Payee B may provide the revocation to Filer X in the same manner as if Payee B were making an election under the default manner of paragraph (d)(3)(iii) of this section; Payee B may do so at any time. Second, having received notification from Filer X of the different reasonable alternative manner on January 16, 2023, Payee B may provide the revocation to Filer X in the same manner as if Payee B were making an election under the different reasonable alternative manner pursuant to paragraph (d)(3)(v) of this section. Third, because Filer X previously provided notification of a reasonable alternative manner (2022 alternative) before providing notification of a different reasonable alternative manner on January 16, 2023, (2023 alternative), Payee B may provide the revocation to Filer X in the same manner as if Payee B were making an election under the previous reasonable alternative manner (2022 alternative); Payee B may do so for a period of 60 days after January 16, 2023, pursuant to paragraph (d)(3)(v)(D)(2) of this section.

(iv) Example 4. (A) In 2022, Filer Y furnishes, as required, a Form W-2 to Payee C for wages paid in 2021. The correct version of this Form W-2,



without any errors, de minimis or otherwise, would have reported \$15,200 of federal income tax withheld, \$6,200 of social security tax withheld, \$1,450 of Medicare tax withheld, and \$6,000 of state income tax withheld. However, the Form W-2 which Filer Y furnishes to Payee C reports \$15,180 of federal income tax withheld, \$6,180 of social security tax withheld, \$1,430 of Medicare tax withheld, and \$5,980 of state income tax withheld. The 2021 Form W-2 does not require reporting a sum total of tax withheld of all types. Payee C does not make an election under paragraph (d)(3)(i) of this section.

(B) For each of the four amounts of tax withheld, the difference between the amount of tax withheld that is reported on the Form W-2 and the correct amount is \$20. Under paragraph (d)(2) of this section, each of these errors is a de minimis error because each is with respect to an amount of tax withheld and is not more than \$25. If there are no other errors on the Form W-2, the safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section applies. The amounts of tax withheld are not combined in determining whether an error constitutes a de minimis error, if a combined amount is not required to be reported on the payee statement.

(v) Example 5. (A) In 2022, Filer Z furnishes, as required, a Form W-2 to Payee D for wages paid in 2021. The correct version of this Form W-2, without any errors, de minimis or otherwise, would have reported \$15,200 of federal income tax withheld, \$6,200 of social security tax withheld, \$1,450 of Medicare tax withheld, \$6,000 of state income tax withheld, and no other taxes withheld. The Form W-2 that Filer Z furnishes to Payee D reports \$15,170 of federal income tax withheld, \$6,220 of social security tax withheld, and the correct amount of Medicare tax withheld and state income tax withheld.

(B) A single amount of tax withheld reported on the Form W-2, specifically the amount of federal income tax withheld, differs from the correct amount by more than \$25. Under paragraph (d)(2) of this section, this error is not a de minimis error. Therefore, the safe harbor exception for de minimis errors provided for by paragraph (d)(1) of this section does not apply. It is irrelevant that the sum total of taxes withheld reported on the Form W-2 (\$28,840) differs from the correct total of taxes withheld (\$28,850) by less than \$25.

(6) Voluntary corrections. Regardless of whether the de minimis error safe harbor provides an exception for not furnishing a particular corrected payee statement, the corrected payee statement may be furnished voluntarily if a corresponding information return reflecting the information reported on the corrected payee statement is concurrently filed.

(7) Limitations on applicability. The safe harbor exception provided for by paragraph (d)(1) of this section applies only for the purposes of payee statement penalties under section 6722. Accordingly, this safe harbor exception applies to the reporting of the withholding of tax on payee statements, but does not apply for purposes of any underlying requirements to withhold or pay tax. Interest, penalties, and other additions to tax may be imposed under other sections for under-withholding or underpaying tax in any amount.

(e) \* \* \*--

(1) Payee. See §301.6721-1(h)(5) for the definition of “payee.”

(2) Payee statement. For purposes of this section the term “payee statement” has the same meaning as payee statement as defined by section 6724(d)(2), including any statement required to be furnished under—

\* \* \* \* \*

(xxxiii) Section 6055 (relating to information returns reporting minimum essential coverage);

(xxxiv) Section 6056 (relating to information returns reporting on offers of health insurance coverage by applicable large employer members);

(xxxv) Section 6035, other than a statement described in section 6724(d)(1)(D), (relating to basis information with respect to property acquired from decedents, generally Schedule A of Form 8971, “Information Regarding Beneficiaries Acquiring Property From a Decedent”);

(xxxvi) Section 6050Y(a)(2), 6050Y(b)(2), or 6050Y(c)(2) (relating to certain life insurance contract transactions); or

(xxxvii) Section 6226(a)(2) (regarding statements relating to alternative to payment of imputed underpayment by a partnership) or under any other provision of this title which provides for the application of rules similar to section 6226(a)(2).

\* \* \* \* \*

(4) Filer. For purposes of this section the term “filer” means a person that is required to furnish a payee statement as defined in paragraphs (e)(2) and (3) of this section under the applicable information reporting section described in paragraphs (e)(2) and (3) of this section.

(f) Adjustment for inflation. Each of the dollar amounts under paragraphs (a), (b), and (c) of this section and paragraphs (a), (b), (d)(1), and (e) of section 6722 shall be adjusted for inflation pursuant to section 6722(f).

(g) Applicability date. This section applies with respect to payee statements required to be furnished on or after January 1, 2022.

Par. 7. Section 301.6724-1 is amended by:

1. Revising paragraphs (a)(1) and (a)(2)(ii).
2. Designating the undesignated paragraph following paragraph (a)(2)(ii) as paragraph (a)(2)(iii) and revising newly designated paragraph (a)(2)(iii).
3. Revising introductory paragraph (b) and paragraphs (b)(2)(i) and (ii).
4. Designating the undesignated paragraph following paragraph (b)(2)(ii) as paragraph (b)(3).

5. Revising paragraph (c)(3)(ii); introductory paragraph (e)(1); paragraph (e)(1)(i); and the first sentence of paragraph (e)(1)(vi)(A).
6. Removing paragraph (e)(1)(vi)(E); redesignating paragraphs (e)(1)(vi)(F) and (G) as (e)(1)(vi)(E) and (F); and revising paragraphs (e)(1)(vi)(E) and (F).
7. Revising introductory paragraph (f)(1); paragraphs (f)(1)(i), (f)(5)(i) and (ii), (g), (h), and (k); introductory paragraph (m); and paragraph (m)(1).
8. Adding paragraph (o).

The revisions and additions read as follows:

§301.6724-1 Reasonable cause.

(a) \* \* \*--

(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) \* \* \*

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

(iii) 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. See paragraph (h) of this section for the reasonable cause safe harbor after an election under section 6722(c)(3)(B) and §301.6722-1(d)(3).

(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. 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. The applicable mitigating factors include, but are not limited to—

\* \* \* \* \*

(2) \* \* \*

(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; 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.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(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);

\* \* \* \* \*

(e) \* \* \*--

(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 on an information return resulted from the failure of the payee to provide information to the filer (that is, 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.

(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. If the account is opened in person, the initial solicitation may be made by oral or written request,

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

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").

\* \* \* \* \*

(vi) \* \* \* (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 (h) of §301.6721-1, is filed provides specific requirements relating to the manner or the time period in which a TIN must be solicited. \* \* \*

\* \* \*

(E) A filer is not required to make annual solicitations by mail on accounts with respect to which the filer has an undeliverable address, that is, 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.

(F) Except as provided in paragraphs (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.

\* \* \* \* \*

(f) \* \* \*--

(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 (that is, 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.

(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. 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 paragraphs (f)(1)(ii) and (iii) of this section.

\* \* \* \* \*

(5) Exceptions and limitations. (i) The solicitation requirements under this paragraph (f) do not apply to the extent that an information reporting



[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

provision under which a return, as defined in §301.6721-1(h), 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 §301.6721-1(h) is required to be filed for the account for such year.

\* \* \* \* \*

(g) \* \* \*

(2) Special rules relating to TINs--(i) Questions and answers. 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(h), payee statement as defined in §§301.6722-1(e)(2) and (3), 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).

(ii) General rule--(A) Q-1. Is a filer 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 filer is the payee's correct number, the filer provided

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

that number on an information return, and the number is later determined not to be the payee's correct number?

(B) A-1. A filer 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 filer was his correct number, and the filer included such number on the information return before being notified by the Internal Revenue Service (IRS) (or a broker) that the number is incorrect.

(iii) Due Diligence Defined for Accounts Opened and Instruments Acquired After December 31, 1983--(A)(1) Q-2. In order for a filer 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 filer take?

(2) A-2. (i) In general, the filer 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 filer 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 filer will be liable for the \$250 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,

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

provided that the filer exercises due diligence in processing such number, that is, the filer uses the same care in processing the TIN provided by the payee that a reasonably prudent filer would use in the course of the filer's business in handling account information such as account numbers and balances.

(ii) Once notified by the IRS (or a broker) that a number is incorrect, a filer is liable for the penalty for all prior years in which an information return was filed with that particular incorrect number if the filer 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 filer that the number is incorrect unless the filer 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).

(B)(1) Q-3. Is a filer as described in paragraph (g)(2)(iii)(A)(2) of this section liable for the penalty if the filer obtained a certified TIN from a payee but inadvertently processed the name or number incorrectly on the information return?

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

(iv) Special rules. (A)(1) Q-4. With respect to an instrument transferred without the assistance of a broker, is a filer liable for the penalty for filing an information return with a missing or an incorrect TIN if the filer records on its books a transfer of a readily tradable instrument in a transaction in which the filer was not a party?

(2) A-4. Generally, a filer as described in paragraph (g)(2)(iv)(A)(1) of this section 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 filer if the filer records on its books a transfer in which the filer was not a party. This exception applies until the calendar year in which the filer receives a certified TIN from the payee.

(B)(1) Q-5. Is the filer described in paragraph (g)(2)(iv)(A)(2) of this section 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?

(2) A-5. There is no requirement on the filer 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 paragraph (g)(2)(iv)(A)(2) of this section.

(C)(1) Q-6. Is a filer as described in paragraph (g)(2)(iv)(A)(1) of this section considered to have exercised due diligence if the payee provides a TIN to the filer (whether or not certified), the filer uses that number on the information return filed for the payee, and the number is later determined to be incorrect?

(2) A-6. A filer as described in paragraph (g)(2)(iv)(A)(1) of this section 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 paragraph (g)(2)(iv)(A)(2) of this section where the transfer is accompanied with a TIN provided that the filer uses the same care in processing the TIN provided by a payee that a reasonably prudent filer would use in the course of the filer's business in handling account information, such as account numbers and account balances. Thus, a filer will not be liable for the penalty if the filer 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 filer will not be considered as having exercised due diligence under paragraph (g)(2)(iv)(A)(2) of this section after the IRS or a broker notifies the filer that the number is incorrect unless the filer undertakes the required additional actions described in paragraph (g)(2)(iii)(A)(2)(ii) of this section.

(D)(1) Q-7. Is a filer 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 filer could have met the due diligence requirements but for the fact that the filer incurred an undue hardship?

(2) A-7. A filer 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 filer could have satisfied the due diligence requirements but for the fact that the filer incurred an undue hardship. An undue hardship is an extraordinary or unexpected event such as the

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

destruction of records or place of business of the filer by fire or other casualty (or the place of business of the filer's agent who under a pre-existing written contract had agreed to fulfill the filer'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 filer). Undue hardship will also be found to exist if the filer could have met the due diligence requirements only by incurring an extraordinary cost.

(E)(1) Q-8. How does a filer obtain a determination from the IRS that the filer 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 filer is subject to the penalty?

(2) 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 filer 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 filer either was in the process of exercising or stood ready to exercise due diligence when the undue hardship occurred. A filer may request an undue hardship determination by submitting a written statement to the address provided with the notice proposing penalty assessment (for example, Notice 972CG) or the notice of penalty assessment (for example, CP15 or CP215), or as otherwise directed by the Internal Revenue Service in forms, instructions or publications.

(F)(1) Q-9. Is a pre-1984 account or instrument of a filer that is exchanged for an account or instrument of another filer as a result of a merger of the other filer or acquisition of the accounts or instruments of such filer transformed into a post-1983 account or instrument if the merger or acquisition occurs after December 31, 1983?

(2) 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.

(G)(1) Q-10. May the acquiring taxpayer described in paragraph (g)(2)(iv) (F)(2) of this section rely upon the business records and past procedures of the merged filer or the filer 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?

(2) A-10. Yes. The acquiring filer may rely upon the business records and past procedures of the merged filer or of the filer 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.

(H)(1) Q-11. To what extent may a filer 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 of this chapter as contained in 26 CFR part 35a, revised April 1, 1999)?

(2) A-11. A filer 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 of this chapter 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 on or after January 1, 2022. See §301.6724-1(g) as in effect and contained in 26 CFR part 301, as revised April 1, 2021, for rules applicable prior to January 1, 2022.

(h) Reasonable cause safe harbor after election under section 6722(c)(3)  
(B). 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 under this paragraph (h) if the failure is a result of an election under §301.6722-1(d)(3)(i) and the presence of a de minimis error or errors as described in sections 6721(c)(3) and 6722(c)(3) and §§301.6721-1(e) and 301.6722-1(d) on a filed information return or furnished payee statement. This paragraph (h) applies only when the safe harbor exceptions provided for by §301.6721-1(e)(1) or §301.6722-1(d)(1) would have applied, but for an election under §301.6722-1(d)(3)(i). To establish reasonable cause and not willful neglect under this paragraph (h), the filer must file a corrected information return or furnish a corrected payee statement, or both, as applicable, within 30 days of the date of the election under



§301.6722-1(d)(3)(i). Where specific rules provide for additional time in which to furnish a corrected payee statement and file a corrected information return, the 30-day rule does not apply and the specific rules will apply. See for example §§31.6051-1(c) through (d) and 31.6051-2(b). If the filer rectifies the failure outside of this 30-day period, the determination of reasonable cause will be on a case-by-case basis.

\* \* \* \* \*

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

(1) Example 1. (i) On August 1, 2015, 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, 2015, 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 2015. L timely files an information return subject to section 6721, that does not contain A’s TIN, for payments made during the 2015 calendar year with respect to A’s account. A penalty is imposed on L pursuant to §301.6721-1(a)(2) 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 §301.6721-1(a)(2) for the failure on the 2015 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.

(2) Example 2. (i) On August 1, 2015, 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 29, 2016, M includes the TIN that B provided on the Form 1099-INT for the 2015 calendar year. In October 2016 the Internal Revenue Service, pursuant to section 3406(a)(1)(B), notifies M that the 2015 return filed for B contains an incorrect TIN. In April 2017 a penalty is imposed on M pursuant to §301.6721-1(a)(2) for M's failure to file a correct information return for the 2015 calendar year, that is, 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 2015 in the time and manner prescribed in paragraph (f)(1)(i) of this section and reflected the TIN received from B on the 2015 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 §301.6721-1(a)(2) for the failure on the 2015 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.

(3) Example 3--(i) Table.

Table for Example 3

<b>2015</b>	<b>2/2016</b>	<b>10/2016</b>	<b>2/2017</b>
Account opened (solicits TIN)	2015 return filed	B-notice with respect to 2015 return	2016 return filed
<b>4/2017</b>	<b>10/2017</b>	<b>2/2018</b>	<b>4/2018</b>
6721 penalty notice for 2015 return	B-notice with respect to 2016 return	2017 return filed	6721 penalty notice for 2016

(ii) The facts are the same as in Example 2 in paragraph (k)(2)(i) of this section. Under §31.3406(d)-5(d)(2)(i) of this chapter and paragraph (f)(3) of this section, within 15 days of the October 2016 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 2016 with respect to the account setting forth B's incorrect TIN. In October 2017 the Internal Revenue Service notifies M pursuant to section 3406(a)(1)(B) that the 2016 return contains an incorrect TIN. In April 2018, a penalty is imposed on M pursuant to §301.6721-1(a)(2) for M's failure to include B's correct TIN on the return for 2016. 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 2015 and, after being notified of the incorrect TIN in October 2016, the first annual solicitation within the time and manner prescribed by §31.3406(d)-5(d)(2)(i) of this chapter and paragraphs (f)(1)(ii) and (f)(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 §301.6721-1(a)(2) for the failure on the 2016 return is waived due to reasonable cause.

(4) Example 4--(i) Table.

Table for Example 4

<b>2015</b>	<b>2/2016</b>	<b>10/2016</b>	<b>2/2017</b>
Account opened (solicits TIN)	2015 return filed	B-notice with respect to 2015 return	2016 return filed
<b>4/2017</b>	<b>10/2017</b>	<b>2/2018</b>	<b>4/2018</b>
6721 penalty notice for 2015 return	B-notice with respect to 2016 return	2017 return filed	6721 penalty notice for 2016 return

(ii) The facts are the same as in Example 3 in paragraph (k)(3)(ii) of this section. M timely solicits B’s TIN in October 2017, which B fails to provide. M files the return for 2017 with the incorrect TIN. In April 2019 the Internal Revenue Service informs M that the 2017 return contains an incorrect TIN. M does not solicit a TIN from B in 2018 and files a return for 2018 with B’s incorrect TIN. M seeks a waiver of the penalty under §301.6721-1(a)(2) 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 2018. 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.

(5) Example 5. In 2016, 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 2016 and 2017 for the missing TIN, which C fails to provide. However, for 2018 M fails to send the solicitation required by §1.6050H-2(f) of this chapter. N files returns for the 2016, 2017, and 2018 calendar years pursuant to section 6050H without C’s TIN. Although N made the initial and the first annual solicitations in 2016 and the second annual solicitation in 2017, N did not solicit the TIN in 2018 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 §301.6721-1(a) for the 2018 information return is not waived.

(6) Example 6--(i) Table.

Table for Example 6

<b>10/2015</b>	<b>2/2016</b>	<b>10/2016</b>	<b>2/2017</b>
----------------	---------------	----------------	---------------

Account opened. (solicits TIN)	2015 return filed	B-notice with respect to 2015 return	2016 return filed
<b>4/2017</b>	<b>10/2017</b>	<b>2/2018</b>	<b>4/2018</b>
6721 penalty notice for 2015 return	B-notice with respect to 2016 return	2017 return filed	6721 penalty notice for 2016 return

(ii) On October 1, 2015, 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 2015 calendar year. In October 2016 the Internal Revenue Service notifies R pursuant to section 3406(a)(1)(B) that the information return filed for E for the 2015 calendar year contained an incorrect TIN. At the time R receives this notification, E's account contains the incorrect TIN. On December 31, 2016, 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 2016 calendar year, that is, in February 2017.

(iii) In April 2017, the Internal Revenue Service notifies R pursuant to §301.6721-1(a)(2) that the information return filed for the 2015 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 (that is, 2015) 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 2015 calendar year information return is waived due to reasonable cause.

(7) Example 7. (i) The facts are the same as in Example 6 in paragraph (k)(6)(ii) of this section. In April 2018 the Internal Revenue Service notifies R pursuant to §301.6721-1(a)(2) that the information return filed for the 2016 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 2016 information return, and the penalty will not be waived due to reasonable cause.

(8) Example 8. (i) On January 31, 2022, Institution Q timely furnishes Form 1099-MISC to Individual F. Also on January 31, 2022, Q timely files a corresponding Form 1099-MISC with the Internal Revenue Service. On March 15, 2022, Q becomes aware of de minimis errors (within the meaning of §301.6722-1(d)(2)) made on the Form 1099-MISC furnished to F and filed with the Internal Revenue Service. On March 20, 2022, F makes an election under §301.6722-1(d)(3)(i) with respect to the Form 1099-MISC that Q furnished to F. Q furnishes a corrected Form 1099-MISC to F and files a corrected Form 1099-MISC with the Internal Revenue Service by April 19, 2022, which date is 30 days from March 20, 2022.

(ii) The election by F and the presence of de minimis errors on the Forms 1099-MISC make the penalties under sections 6721 and 6722 applicable to Q. See §§301.6721-1(e)(3) and 301.6722-1(d)(3). Q, however, rectified the failures within 30 days of March 20, 2022, the date F made the election under §301.6722-1(d)(3)(i) with respect to the Form 1099-MISC that Q furnished to F. Therefore, under paragraph (h) of this section, Q is considered to have established reasonable cause, and under section 6724 and paragraph (a)(1) of this section the penalties under sections 6721 and 6722 are inapplicable.

(9) Example 9. (i) The facts are the same as in Example 8 in paragraph (k)(8)(i) of this section, except that Q does not become aware of de minimis errors made on the Form 1099-MISC furnished to F and filed with the Internal Revenue Service until June 28, 2022. Additionally, Q furnishes the corrected Form 1099-MISC to F and files the corrected Form 1099-MISC with the Internal Revenue Service after June 28, 2022, but by July 28, 2022, which date is 30 days from June 28, 2022.

(ii) As in the example in paragraph (k)(8), the election by F and the presence of de minimis errors on the Forms 1099-MISC make the penalties under sections 6721 and 6722 applicable to Q. Additionally, because Q did not

furnish a corrected Form 1099-MISC to F and file a corrected Form 1099-MISC with the Internal Revenue Service within 30 days of the date of F's election under §301.6722-1(d)(3)(i), paragraph (h) of this section does not apply. However, Q may be able to demonstrate reasonable cause under the provisions of paragraph (a) of this section. As part of this demonstration, for example, Q may be able to demonstrate that Q acted in a responsible manner under paragraph (d)(1) of this section by rectifying the failure (the de minimis errors) within 30 days of discovery.

\* \* \* \* \*

(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 address provided with the notice proposing penalty assessment (for example, Notice 972CG) or the notice of penalty assessment (for example, CP15 or CP215), or as otherwise directed by the Internal Revenue Service in forms, instructions or publications. The statement must—

(1) State the specific provision under which the waiver is being requested, that is, paragraph (b) or under paragraphs (c)(2) through (6) or paragraph (h) of this section;

\* \* \* \* \*

(o) Applicability date. In general, this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2022. See paragraph (g)(3) of this section for effective dates applicable to paragraph (g) of this section. Paragraph (h) of this section applies with respect to information returns required to be filed and payee statements required to be furnished on or after January 1, 2017. See section 7805(b)(1)(C) and section 4 of Notice 2017-09, IRB-2017-4 (January 23, 2017).

[FOR APPROVAL TO BEGIN PINK CIRCULATION 9-17-2021]

Deputy Commissioner for  
Services and Enforcement.

Approved:

Assistant Secretary of the Treasury  
(Tax Policy).