

**§ 1.142(a)(6)–1 Exempt facility bonds: solid waste disposal facilities.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) *Radioactive material.* Solid waste excludes any radioactive material subject to regulation under the Nuclear Regulatory Act (10 CFR 1.1 *et seq.*), as in effect on the issue date of the bonds.

\* \* \* \* \*

(h) \* \* \*

*Example 9* \* \* \*

(ii) The facts are the same as in paragraph (i) of this *Example 9*, except that the stripped bark represents only 55 percent by weight and volume of the materials that are transported by the conveyor belt. \* \* \*

\* \* \* \* \*

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2011–22738 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9546]

RIN 1545–BD04

**Definition of Solid Waste Disposal Facilities for Tax-Exempt Bond Purposes; Correction**

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

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations (TD 9546) that were published in the *Federal Register* on Friday, August 19, 2011, on the definition of solid waste disposal facilities for purposes of the rules applicable to tax-exempt bonds issued by State and local governments. These regulations provide guidance to State and local governments that issue tax-exempt bonds to finance solid waste disposal facilities and to taxpayers that use those facilities.

**DATES:** This correction is effective September 7, 2011 and is applicable beginning October 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Timothy Jones, (202) 622–3980 (not a toll free number).

**SUPPLEMENTARY INFORMATION:****Background**

The final regulations (TD 9546) that are the subject of this correction are

under section 142 of the Internal Revenue Code.

**Need for Correction**

As published August 19, 2001 (76 FR 51879), the final regulations (TD 9546) contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the final regulations (TD 9546), that are the subject of FR Doc. 2011–21154, are corrected as follows:

1. On page 51879, column 3, in the preamble, under the paragraph heading “Explanation of Provisions”, line 11 from the bottom of the second paragraph, the language ““that has no market or other value at the place where the property is located”” is corrected to read “that has no market or other value at the place where the property is located”.

2. On page 51880, column 2, in the preamble, under the paragraph heading “Explanation of Provisions”, line 8 of the column, the language “Regulations but recommended removing” is corrected to read “Regulations, but recommended removing”.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2011–22739 Filed 9–6–11; 8:45 am]

BILLING CODE 4830–01–P

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

[TD 9550]

RIN 1545–BF61

**Section 6707A and the Failure To Include on Any Return or Statement Any Information Required To Be Disclosed Under Section 6011 With Respect to a Reportable Transaction**

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

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations that provide guidance regarding section 6707A of the Internal Revenue Code (Code) with respect to the penalties applicable to the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. These final regulations reflect amendments under

the Small Business Jobs Act of 2010 that revise the penalty calculation.

**DATES:** *Effective Date:* These regulations are effective on September 7, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Spence Hanemann, (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains amendments to 26 CFR part 301 under section 6707A of the Code. On September 11, 2008, temporary regulations (TD 9425) relating to the penalty under section 6707A for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction were published in the *Federal Register* (73 FR 52784). A notice of proposed rulemaking (REG–160868–04) cross-referencing the temporary regulations was published in the *Federal Register* on the same day (73 FR 52805). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received from the public. This comment was considered and is available for public inspection at <http://www.regulations.gov> or upon request. Upon due consideration, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed in this preamble.

**Summary of Comments and Explanation of Revisions***1. 2010 Amendments to Section 6707A*

On September 27, 2010, the President signed into law the Small Business Jobs Act of 2010, Public Law 111–240 (124 Stat. 2504), section 2041 of which amended section 6707A of the Code. The amendments revise the amount of the penalty to make the penalty proportionate to the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from the reportable transaction if it were respected for Federal tax purposes). The amendments also establish maximum and minimum penalty amounts. The amended penalty calculation was made retroactive to penalties assessed after December 31, 2006. To account for the change in the law, these final regulations conform to the statutory language of section 6707A, as amended. These changes are reflected in §§ 301.6707A–1(a) and 301.6707A–1(e). These final regulations follow the amended statutory language regarding

the amount of the penalty enacted in the Small Business Jobs Act of 2010, but do not give further guidance on how the amount of the penalty is computed. The Treasury Department and the IRS are aware that questions have been raised regarding the 2010 amendments to section 6707A and expect to issue regulations that will provide guidance on the computation of the amount of the penalty, as amended, at a later time. Interested persons may submit comments regarding the 2010 amendments to section 6707A relating to the computation of the penalty, including how to determine the decrease in tax shown on the return and application of the maximum penalty. For information on how to submit comments, see the section on "Comments on Future Notice of Proposed Rulemaking" in this preamble.

The proposed regulations included factors the Commissioner would consider and weigh in determining whether to grant a request for rescission of the section 6707A penalty associated with a nonlisted reportable transaction. Under the law in effect at the time the proposed regulations were issued, the section 6707A penalty amount was a fixed dollar amount that did not account for the tax benefit associated with the reportable transaction. The proposed regulations included consideration of whether the penalty assessed was disproportionately larger than the tax benefit received among the factors in the Commissioner's determination. Because the 2010 amendments to section 6707A provide that the penalty is a percentage of the tax benefit associated with the reportable transaction subject to maximum and minimum limitations on the penalty amounts, consideration of whether the penalty assessed is disproportionately larger than the tax benefit received for purposes of rescission was eliminated.

Also, at the time the proposed regulations were issued, the section 6707A(e) penalty for failing to disclose the requirement to pay certain penalties in certain Securities and Exchange Commission (SEC) filings was treated in the same way as the penalty for failure to disclose a listed transaction as required under section 6011. Because a penalty for failing to disclose a listed transaction is not subject to rescission, the proposed regulations stated that the section 6707A(e) penalty for failing to make a disclosure in an SEC filing also was not subject to rescission. As a result of the 2010 amendments to section 6707A, the penalty for failure to make a disclosure in an SEC filing is no longer treated exclusively like a section 6707A penalty for failure to disclose a listed

transaction as required by section 6011. These final regulations adopt the rule that the section 6707A(e) penalty for failing to disclose certain penalties in SEC filings will be rescinded if the IRS rescinds in full the section 6707A penalty for failing to disclose under section 6011 the reportable transaction that underlies the section 6707A(e) penalty.

## 2. Clarifying Changes

The final regulations clarify where a late Form 8886 should be filed in order for the late submission to weigh in favor of rescinding the penalty for not filing the form as required by § 1.6011-4. These final regulations generally state that, if a taxpayer inadvertently fails to file a Form 8886 as required by § 1.6011-4 and, upon becoming aware of the failure, files an untimely but otherwise complete and proper Form 8886, the filing of the untimely disclosure statement will weigh in favor of rescission. Under § 1.6011-4, a taxpayer who has participated in a reportable transaction must file a disclosure statement, Form 8886, "Reportable Transaction Disclosure Statement," providing detailed information about the transaction and its expected tax treatment and all potential tax benefits. The taxpayer must attach a Form 8886 to any tax return (including any amended return or application for tentative refund) that reflects participation in a reportable transaction. At the same time that the Form 8886 is first filed by the taxpayer pertaining to a particular reportable transaction, the taxpayer also must send a copy of the Form 8886 to the Office of Tax Shelter Analysis (OTSA). These final regulations generally provide that, in order to weigh in favor of rescission, an untimely disclosure statement should be filed with the office or offices where the disclosure statement should have been filed in the first instance. If the taxpayer failed to file a disclosure statement with a return (including an amended return or application for tentative refund), the taxpayer must file an amended return with the disclosure statement so that the service center can associate the untimely disclosure statement with the proper return. The amended return accompanying the untimely disclosure statement must make no amendments to the original return other than the inclusion of the untimely disclosure statement. Additionally, the taxpayer must state in the space provided for an explanation of changes on the amended return that it is filing the amended return solely because it failed to disclose a reportable transaction on its original return. An

example was added to the final regulation to illustrate these rules.

A clarifying change was also made with respect to § 1.6707A-1(d)(5) relating to rescission. Reasonable cause and good faith is a factor that may weigh in favor of rescission. Part of a determination whether reasonable cause and good faith exist may depend upon whether a taxpayer reasonably believed that the Code did not require disclosure or disclosure was adequately made. To acknowledge that these are appropriate considerations, a statement was added to the regulation that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith. Otherwise, the Commissioner (or the Commissioner's delegate) will not consider doubt as to liability for the penalties in determining whether to grant rescission.

In addition to the changes described in this preamble, these final regulations clarify the language of the proposed regulations in a few other ways not intended to be substantive.

## 3. Clarification of Section 6011 References

A commenter suggested that references to section 6011 be revised to reference either § 1.6011-4 or the other Code provisions that deal specifically with reportable transactions. In response to this comment pinpoint citations to the regulations under section 6011 were added in some examples. The language used in section 6707A refers to the general provision of section 6011 rather than to a specific regulatory section under section 6011. These regulations include language that mirrors the language used in section 6707A, but also include appropriate citations to regulations under section 6011 to add clarity to the scope of these regulations.

## 4. Comments on Future Notice of Proposed Rulemaking

As discussed in this preamble, interested persons may submit comments on the future Notice of Proposed Rulemaking regarding the 2010 amendments to section 6707A relating to the computation of the penalty under section 6707A. Comments should be submitted in writing and can be mailed to Office of Associate Chief Counsel (Procedure and Administration), Re: REG-103033-11, CC:PA:B02, Room 5135, 1111 Constitution Avenue, NW., Washington, DC 20224.

## Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal authors of these regulations are Spence Hanemann of the Office of the Associate Chief Counsel (Procedure and Administration) and Adrienne Mikolashek, formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

## List of Subjects in 26 CFR Part 301

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

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

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

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

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

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

(a) *In general.* Any person who fails to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction may be subject to a monetary penalty. Subject to maximum and minimum limits, the penalty for failure to include information with respect to any reportable transaction is 75 percent of the decrease in tax shown on the return as a result of the transaction or the

decrease that would have resulted from the transaction if it were respected for Federal tax purposes. The penalty for failure to include information with respect to a listed transaction shall not exceed \$100,000 for a natural person and \$200,000 for all other persons. The penalty for failure to include information with respect to any other reportable transaction shall not exceed \$10,000 for a natural person and \$50,000 for all other persons. The penalty with respect to any reportable transaction shall not be less than \$5,000 for a natural person and \$10,000 for all other persons. The section 6707A penalty is in addition to any other penalty that may be imposed.

(b) *Definitions*—(1) *Reportable transaction.* The term “reportable transaction” is defined in section 6707A(c)(1) of the Code and § 1.6011-4(b)(1) of this chapter.

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

(c) *Assessment of the penalty*—(1) *In general.* The Internal Revenue Service may assess a penalty under section 6707A with respect to each failure to disclose a reportable transaction within the time and in the form and manner provided by §§ 1.6011-4(d) and 1.6011-4(e) of this chapter or pursuant to the time, form, and manner stated in other published guidance. Section 1.6011-4(e) provides, in part, that a taxpayer must attach a disclosure statement to the taxpayer’s return for each taxable year for which the taxpayer participates in a reportable transaction. A taxpayer also must attach a disclosure statement to each amended return that reflects the taxpayer’s participation in a reportable transaction and, if a reportable transaction results in a loss that is carried back to a prior year, a taxpayer must attach a disclosure statement to the taxpayer’s application for tentative refund or amended return for that prior year. In addition, a copy of the disclosure statement must be sent to the IRS Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction. Nonetheless, a taxpayer who is required to disclose a transaction by filing Form 8886, “Reportable Transaction Disclosure Statement,” (or successor form) with a return (including an amended return or application for tentative refund) and who is also required to disclose the transaction by filing that form with OTSA, is subject to only a single section 6707A penalty for failure to make either one or both of those disclosures. If

section 6011 and the regulations thereunder require a disclosure statement to be filed at the time that a return is filed, the disclosure statement is considered to be timely filed if it is filed at the same time as the return, even if the return is filed untimely after its due date (including extensions).

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

*Example 1.* Taxpayer T is required to attach a Form 8886 to its return for the 2008 taxable year and to send a copy of the Form 8886 to OTSA at the time it files its return. Taxpayer T fails to attach the Form 8886 to its return and fails to send a copy of the Form 8886 to OTSA. Taxpayer T is subject to a single penalty under section 6707A for failure to disclose because Taxpayer T failed to comply with the disclosure requirements of section 6011 as described in §§ 1.6011-4(d) and 1.6011-4(e) of this chapter. A penalty under section 6707A also would apply if Taxpayer T had failed to comply with only one of the two requirements.

*Example 2.* Same as *Example 1*, except that Taxpayer T also subsequently files an amended return for 2008 that reflects Taxpayer T’s participation in the reportable transaction described in *Example 1*. Taxpayer T fails to attach a Form 8886 to the amended return as required by § 1.6011-4(e)(1) of this chapter. Taxpayer T is subject to an additional penalty under section 6707A for failing to disclose a reportable transaction on the amended return for 2008.

*Example 3.* In November 2009, Taxpayer U participates in a reportable transaction resulting in a loss. On March 15, 2010, Taxpayer U files its 2009 return, on which it reports the loss and to which it fails to attach a Form 8886. One month later, Taxpayer U files an amended return for 2008, on which it carries back the loss and to which it fails to attach a Form 8886. Section 1.6011-4(e)(1) of this chapter requires Taxpayer U to attach a Form 8886 to its amended return for the 2008 taxable year. Taxpayer U is subject to two penalties under section 6707A: one for the failure to attach Form 8886 to its amended return for 2008 and another for the failure to attach Form 8886 to its 2009 return.

*Example 4.* Taxpayer V participates in a nonlisted reportable transaction and is required to attach a Form 8886 to its return for the 2009 taxable year that is due on March 15, 2010. Taxpayer V timely files its return but fails to attach the Form 8886 to its return. After the due date of Taxpayer V’s return and without an extension of time to file, Taxpayer V files an amended return relating to the 2009 taxable year to which Taxpayer V attaches the Form 8886. Taxpayer V is subject to a penalty under section 6707A for failure to disclose because Taxpayer V failed to comply with the disclosure requirements of section 6011 (described in § 1.6011-4(e)(1) of this chapter) by not attaching a Form 8886 to its original return for the 2009 taxable year that was timely filed on or before the due date of March 15, 2010. An additional penalty under section 6707A would apply if Taxpayer V

had failed to attach a Form 8886 to its amended return.

*Example 5.* Shareholder W, a shareholder in an S Corporation, receives a timely Schedule K-1, "Shareholder's Share of Income, Deductions, Credits, etc.," on April 10, 2009, and determines that she is required to attach a Form 8886 to her individual income tax return for the 2008 taxable year. Shareholder W fails to attach the Form 8886 to her 2008 individual income tax return but files a proper and complete Form 8886 with OTSA on June 12, 2009. Section 1.6011-4(e)(1) of this chapter provides that if a taxpayer who is a partner in a partnership, a shareholder in an S corporation, or a beneficiary of a trust receives a timely Schedule K-1 less than 10 calendar days before the due date of the taxpayer's return (including extensions) and, based on receipt of the timely Schedule K-1, the taxpayer determines that the taxpayer participated in a reportable transaction, the disclosure statement will not be considered late if the taxpayer discloses the reportable transaction by filing a disclosure statement with OTSA within 60 calendar days after the due date of the taxpayer's return (including extensions). Accordingly, Shareholder W is not subject to a penalty under section 6707A for failure to disclose.

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

*Example 7.* Taxpayer Y is required to attach a Form 8886 to its return for the 2008 taxable year with respect to participation in a listed transaction. Taxpayer Y attaches the Form 8886 to its timely filed return. The Form 8886, however, does not describe all of the potential tax benefits expected to result from this transaction and states that information will be provided upon request. Because the Form 8886 does not describe all of the potential tax benefits expected to result from the transaction and merely provides that the information will be provided upon

request, the Form 8886 filed by Taxpayer Y is incomplete and does not satisfy the requirements set forth in § 1.6011-4(d) of this chapter. Taxpayer Y is subject to a penalty under section 6707A for failure to disclose in the appropriate manner.

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

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

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

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

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

(i) The taxpayer, upon becoming aware that it failed, in whole or in part, to disclose a reportable transaction in accordance with the requirements of § 1.6011-4 of this chapter, filed a complete and proper, albeit untimely, Form 8886 (or successor form), as required by § 1.6011-4. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with a return (including an amended return or application for tentative refund), in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file an amended return with the appropriate Service Center and attach a complete and proper Form 8886 (or successor form) to that amended return. The amended return filed with the untimely Form 8886 (or successor form) must not reflect any other changes to the return (including an amended return or application for tentative refund) that it amends, and the taxpayer must, in the space provided for an explanation of changes on the amended

return, state the reason for filing the amended return. If the penalty is due to the taxpayer's failure to file Form 8886 (or successor form) with OTSA, in order for an untimely disclosure to weigh in favor of rescission, the taxpayer must file a complete and proper Form 8886 (or successor form) with OTSA. If the taxpayer fails to file a complete and proper Form 8886 (or successor form) with the return (including an amended return or application for tentative refund) and also fails to file a copy of the complete and proper Form 8886 (or successor form) with OTSA, incurring one penalty for both failures, then the taxpayer must, in the manner prescribed in this paragraph (d)(3)(i), file complete and proper Forms 8886 with both the Service Center and OTSA in order for the untimely disclosures to weigh in favor of rescission. This factor will weigh heavily in favor of rescission provided that—

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

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

(ii) The failure, in whole or in part, to disclose in accordance with the requirements of § 1.6011-4 of this chapter was due to an unintentional mistake of fact that existed despite the taxpayer's reasonable attempts to ascertain the correct facts with respect to the transaction.

(iii) The taxpayer has an established history of properly disclosing other reportable transactions and complying with other tax laws.

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

(v) The taxpayer cooperates with the IRS by providing timely information with respect to the transaction at issue that the Commissioner (or the Commissioner's delegate) may request in consideration of the rescission request. In considering whether a taxpayer cooperates with the IRS, the Commissioner (or the Commissioner's

delegate) will take into account whether the taxpayer meets the deadlines described in Rev. Proc. 2007-21 (2007-1 CB 613) (or successor document) (see § 601.601(d)(2)(ii)(b) of this chapter) for complying with requests for additional information.

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

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

(5) *Factors not considered.* In determining whether to grant rescission, the Commissioner (or the Commissioner's delegate) will not consider collectability of, or doubt as to liability for, the penalties (except that the Commissioner may consider doubt as to liability to the extent it is a factor in the determination of reasonable cause and good faith).

(6) *Example.* The following example illustrates the rules of paragraph (d)(3) of this section:

*Example.* In 2008, Taxpayer Z participated in a nonlisted reportable transaction for the first time. Under § 1.6011-4(e)(1) of this chapter, he was required to attach a complete and proper Form 8886 to his 2008 return, due on April 15, 2009, and to file a copy of the Form 8886 with OTSA. Taxpayer Z timely filed his 2008 return but failed to attach a Form 8886 to his return or file a Form 8886 with OTSA. On June 1, 2009, Taxpayer Z discovered his error. On June 8, 2009, Taxpayer Z filed an amended return for tax year 2008 and attached a complete and proper Form 8886 that disclosed his participation in the reportable transaction. The amended return reflected no changes from the original return and explained that

the sole purpose of the amended return was to correct Taxpayer Z's failure to file a Form 8886 with his original return. On June 8, 2009, Taxpayer Z also filed a copy of the complete and proper Form 8886 with OTSA. The IRS later notified Taxpayer Z that he was subject to a penalty under section 6707A because he failed to comply with the disclosure requirements of section 6011 by not attaching Form 8886 to his return for the 2008 taxable year. The IRS properly assessed the penalty under section 6707A and, on October 15, 2010, issued notice and demand. On November 1, 2010, in accordance with Rev. Proc. 2007-21, Taxpayer Z submitted a written request for rescission of the assessed penalty. The fact that Taxpayer Z filed an untimely Form 8886 shortly after discovery of his error but before the IRS first contacted him concerning his return for the 2008 taxable year will weigh heavily in favor of rescission.

(e) *Reports to the Securities and Exchange Commission (SEC)*—(1) *In general.* Under section 6707A(e), a taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to be consolidated with another person for purposes of these reports) must disclose in certain reports, as provided in revenue procedures or other guidance published pursuant to paragraph (e)(2) of this section, the requirement to pay each of the following penalties:

(i) The penalty imposed by section 6707A(a) for failure to disclose a listed transaction.

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

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

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

(2) *Manner and content of disclosure.* The Secretary may, by publishing a revenue procedure or other guidance in

the Internal Revenue Bulletin, prescribe the manner in which the disclosure under paragraph (e)(1) of this section must be made, including identification of the specific SEC form and section thereof in which the taxpayer must make the disclosure as well as specification of the timing and contents of the disclosure.

(3) *Penalty for failure to disclose in SEC filings.* Any taxpayer who is required to file periodic reports under section 13 or section 15(d) of the Securities Exchange Act of 1934 (or is required to file consolidated reports with another person) may be subject to a penalty under section 6707A(b) for each failure to disclose the requirement to pay a penalty identified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The taxpayer also may be subject to an additional penalty under section 6707A(b) for each failure to disclose a penalty arising under this section in the manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The penalty provided by this paragraph (e)(3) will be rescinded if the IRS rescinds in full the penalty for failing to disclose under section 6011 the reportable transaction underlying the penalty provided by this section. Otherwise, the penalty provided by this paragraph (e)(3) is not subject to rescission.

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

(2) The penalty calculations set forth in paragraph (a) of this section apply to penalties assessed after December 31, 2006.

#### § 301.6707A-1T [Removed]

■ **Par. 3.** Section 301.6707A-1T is removed.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 19, 2011.

**Emily S. McMahan,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011-22853 Filed 9-1-11; 4:15 pm]

**BILLING CODE 4830-01-P**