



OFFICE OF  
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DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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May 18, 2001

CC:PA:APJP:1:EKaye  
COR-111147-01



Dear Ms. [REDACTED]:

This is in response to a letter dated February 15, 2001, written by Mr. [REDACTED], requesting general information regarding the penalty for failure to provide an employee's taxpayer identification number ("TIN") on a Form W-2 and the waiver of such penalty for reasonable cause. Specifically, the letter asks about the situation in which an employee refuses to obtain an identifying number based on religious objections.

Section 6721(a)(1) of the Internal Revenue Code ("Code") generally imposes a \$50 penalty for a failure—described in section 6721(b)(2)—to include all the information required to be shown on an information return.

Section 6724(d) defines "information return" to include any statement of the amount of payments to another person required by section 6051(d) (relating to information returns with respect to income tax withheld). As section 31.6051-1(a)(1)(i) of the Employment Tax Regulations requires that a Form W-2 show an employee's SSN, an employer must request an employee's SSN for inclusion on Form W-2.

Section 6721(c) provides an exception for de minimis failures. The number of information returns to which this exception applies for any calendar year may not exceed the greater of ten or one-half of one percent of the total number of information returns required to be filed by the person during the calendar year. Under section 6721(c)(1)(C), however, this exception only applies if the failure is corrected by August 1<sup>st</sup> of the calendar year in which the required filing date occurs.

Section 6724(a) provides for a waiver of a penalty imposed by section 6721(a) when the failure regarding an information reporting requirement is due to reasonable cause and not willful neglect. Section 301.6724-1(a)(2) of the Regulations on Procedure and Administration defines reasonable cause. This provision requires significant mitigating factors related to the failure or requires that the failure result from events beyond the filer's

control. Moreover, the filer must establish that the filer acted in a responsible manner, both before and after the failure.

Under section 301.6724-1(c)(6) of the Regulations, events beyond the filer's control would include the failure of a person required to provide information necessary for the filer to comply with the information reporting requirements to provide such information to the filer.

Section 301.6724-1(d) of the Regulations defines "acting in a responsible manner," and refers to section 301.6724-1(e) for a special rule regarding missing TINs. Under that rule, a filer will only be considered to act in a responsible manner if the filer makes the required requests for a correct TIN. Generally, a filer must make an initial request, and if a TIN is not received as a result of this request, the filer must generally make two more annual requests. The Regulations specify the time and manner of making these requests.

Thus, the law generally imposes a penalty on an employer who fails to include an employee's SSN on a Form W-2. However, the penalty will not apply if the employer shows reasonable cause for this failure. To show reasonable cause when the failure occurs because an employee does not provide the SSN to the employer, the employer must make the required number of requests to the employee at the time and in the manner described in the Regulations.

The information contained in this letter is provided for your general information only and is not intended to constitute a legal conclusion regarding the facts set forth in the correspondence. It is advisory only and has no binding effect on the Internal Revenue Service.

We hope that this general information is useful to your company. If you have any additional questions regarding this matter, please call Elizabeth Kaye (Badge No. 50-12305) at (202) 622-4910.

Sincerely,

Pamela Wilson Fuller  
Senior Technician Reviewer, Branch 1  
Administrative Provisions and  
Judicial Practice Division  
Procedure and Administration

Enclosure

cc: [REDACTED]