

S Corporations - Required Information

Penalties for Non Timely Filing of 1120S Tax Return Information

The Mortgage Forgiveness Debt Relief Act of 2007 enacted a new provision that imposes a \$89 per shareholder per month penalty if the S corporation does not timely file its corporate return or if it fails to provide information required on the return. The penalty statute for S corporations is provided for in §6699 and applies to any S corporation required to file a return under §6037.

IRC §6037 defines what is considered a filing of a return by an S corporation and states that an S corporation shall make a return for every taxable year containing "information...the Secretary may by forms and regulations prescribe." However, the code section itself also identifies some information required to be reported, including "the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, and the date of each such distribution," among the specified disclosures.

So What Does this Mean?

It's probably a good time to take a look at the requirements of §6037 to determine if your S corporation filings have included all of the required information. The two requirements that really jump out as potential omissions are the requirements to disclose the shares of stock owned by the shareholder at all times during the taxable year and the date of distributions. If, as an example you are not including the date of distributions with your S corporation return filings, the Service could technically apply a penalty for failure to provide information required with the return.

To further illustrate the potential application of the penalty let's assume that an S corporation with 100 shareholders filed its 12/31/08 return timely in March of 2009 but fails to disclose the date of S corporation distributions with the filing of the return. It is conceivable that a penalty of \$89 per shareholder could be assessed monthly until the information is provided to the service. So, in this example, the monthly penalty would be \$8,900. The penalty would be capped at 12 months or \$106,800.

For returns with tax years beginning after December 31, 2009 the penalty jumps to \$195 a month. In the example above, the penalty would be \$19,500 a month with a cap of \$234,000.

Also keep in mind that due to the family attribution rules some S corporations may exceed 100 shareholders. It does not appear that the attribution rules would apply in the case of a penalty assessment so it is possible that the monthly penalty assessed could be greater than the \$19,500 in the example above.

For more information, contact Joyce Waterbury at 919.301.6715.

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