

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: May 2, 2014

to: Holly L. McCann
Chief, Excise Tax Program
Internal Revenue Service

from: Stephanie N. Bland
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Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Section 4101 registration revocations and Section 6719 penalties

This memorandum responds to your request for assistance dated January 28, 2014.
This advice may not be used or cited as precedent.



ISSUES

1. In each of the scenarios described below, when does the registration issued by the Internal Revenue Service (IRS) under § 4101 (637 registration number) of the Internal Revenue Code (Code) become invalid, and what is the effective date of the revocation?
2. In each of the scenarios described below, may the IRS assess the penalty imposed by § 6719 (relating to the failure to register or reregister)?

FACTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

LAW, ANALYSIS, AND CONCLUSIONS

Section 4101(a)(1) of the Code provides that every person required to register must register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as prescribed in the regulations. A registration issued by the IRS pursuant to § 4101 may be used only in accordance with the regulations.

Section 4101(a)(5) provides that under the regulations, a person (other than a corporation the stock of which is regularly traded on an established securities market) is required to reregister if after a transaction (or series of related transactions) more than 50 percent of ownership interests in, or assets of, such person are held by persons

other than persons (or persons related thereto) who held more than 50 percent of such interests or assets before the transaction (or series of related transactions).

Section 4101(c) (relating to the denial, revocation, or suspension of a registration) provides that rules similar to the rules of § 4222(c) apply to registration under § 4101.

Section 4222(c) provides that under the regulations prescribed by the Secretary, the registration of any person under § 4222(c) may be denied, revoked, or suspended if the Secretary determines--

(1) that the person has used the registration to avoid the payment of any tax imposed by chapter 32 of the Code, or to postpone or in any manner to interfere with the collection of any such tax, or

(2) that the denial, revocation, or suspension is necessary to protect the revenue.

The denial, revocation, or suspension under § 4222(c) is in addition to any penalty provided by law for any act or failure to act.

Section 48.4101-1(h) of the regulations provides terms and conditions of registration.

Section 48.4101-1(h)(1)(v) requires that a registrant notify the IRS of any change (such as a change in ownership) in the information the registrant submitted in connection with its application for registration, or previously submitted pursuant to § 4101, within 10 days after the change occurs.

Section 48.4101-1(i)(1) requires that the IRS revoke or suspend a registrant's 637 registration number if the IRS determines that the registrant engaged in certain prohibited actions or failed to satisfy certain affirmative duties required by the Code and regulations.

Section 48.4101-1(i)(3) requires that if the IRS revokes or suspends a 637 registration number, the IRS must notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the IRS notifies the registrant.

Section 6719(a) provides that every person who is required to register or reregister under § 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

Section 6719(b) provides that the penalty under § 6719(a) is (1) \$10,000 for each initial failure to register or reregister, and (2) \$1,000 for each day thereafter such person fails to register or reregister.

Section 6719(c) provides that no penalty shall be imposed under § 6719 with respect to any failure if it is shown that such failure is due to reasonable cause.

From these rules we find that two basic concepts apply to 637 registration numbers that are relevant to the scenarios described above. First, a 637 registration number is valid until the IRS suspends or revokes it by notifying the registrant in writing as described in § 48.4101-1(i)(3). Second, when a person has an affirmative duty to reregister under § 4101(a)(5), the penalty imposed by § 6719 may be assessed regardless of whether the IRS suspends or revokes the original 637 registration number (so long as the failure was not due to reasonable cause). In other words, whether the 637 registration number is valid, and whether the § 6719 penalty may be assessed, are separate determinations that are not necessarily dependent on each other.

With these concepts in mind, we address each of the above scenarios.

[REDACTED]

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Please call Michael Beker (202) 317-6855 if you have any further questions.