

# Safe Harbor Exception for Failure to File Correct Information Returns

## Cross References

- TD 9984, December 19, 2023

The penalty for failure to file a correct information return under IRC section 6721 is \$250 for each return with respect to which such a failure occurs. The penalty is reduced to \$50 in lieu of \$250 if the failure is corrected on or before the 30th day after the required filing date. The penalty is reduced to \$100 in lieu of \$250 if the failure is corrected after the 30-day period but on or before August 1 of the year in which the required filing date occurs. The maximum penalty for all such failures during any calendar year cannot exceed \$3 million.

The IRS recently issued final regulations on the de minimis error safe harbor exceptions to penalties for failure to file correct information returns or furnish correct payee statements. The number of returns that the de minimis exception can apply to for any calendar year is limited to 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.

An error is considered to be de minimis if the difference between any single amount in error and the correct amount is not more than \$100. With respect to an amount of tax withheld, the difference between the error and the correct amount cannot be more than \$25.

This safe harbor exception does not apply 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. 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, or October 15 of the calendar year. The payee must make the election by delivering the election in writing to the filer.