

and profits to compute the book income adjustment for purposes of filing its annual Federal income tax return. Once the election has been made, current earnings and profits must be used for any annualization period for which the taxpayer has only an applicable financial statement described in section 56(f)(3)(A)(iv) and § 1.56-1(c)(1)(iv).

(ii) *Election during 1987 taxable year.* During its taxable year beginning in 1987, a taxpayer may elect to use current earnings and profits for an applicable annualization period even if the taxpayer has not elected to use current earnings and profits for purposes of computing its annual Federal income tax liability under section 56(f)(3)(B)(ii) and § 1.56-1(c)(2). In addition, a taxpayer electing in 1987 to use current earnings and profits for purposes of its installment payments of estimated tax is not required to use current earnings and profits to compute the book income adjustment when filing its annual Federal income tax return. However, unless an annual election under section 56(f)(3)(B)(ii) is made when filing the taxpayer's 1987 Federal income tax return, the election to use current earnings and profits for purposes of computing its estimated tax liability in taxable years beginning after 1987 is terminated.

(iii) *Manner of making election.* If a taxpayer elects to use current earnings and profits for the applicable annualization period under the rules of this section, the taxpayer must attach a statement to its Federal income tax return for the taxable year in which the election was made. The statement must include the electing taxpayer's name, address and taxpayer identification number, identify the election and indicate that it was made under the provisions of § 1.6655-7, state that the only financial statement of the taxpayer available for the annualization period is described in § 1.56-1(c)(1)(iv).

[T.D. 8307, 55 FR 33689, Aug. 17, 1990]

§ 1.6655(e)-1 Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993.

(a) *Description.* Section 6655(e)(2)(C), as added by section 13225 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 486), allows a

corporate taxpayer to make an annual election to use a different annualization period to determine annualized income for purposes of paying any required installment of estimated income tax for a taxable year beginning after December 31, 1993.

(b) *Time and manner for making the election.* An election under section 6655(e)(2)(C) must be made on or before the date required for the payment of the first required installment for the taxable year. For a calendar or fiscal year corporation, Form 8842, Election to Use Different Annualization Periods for Corporate Estimated Tax, must be filed by the 15th day of the 4th month of the taxable year for which the election is to apply. Form 8842 must be filed with the Internal Revenue Service Center where the corporation files its income tax return.

(c) *Revocability of election.* The election described in this section is irrevocable.

(d) *Effective date.* The rules set forth in this section are effective December 12, 1996.

[T.D. 8688, 61 FR 65322, Dec. 12, 1996]

§ 1.6661-1 Addition to tax in the case of a substantial understatement of tax liability.

(a) *In general.* Section 6661 imposes an addition to tax (penalty) for an understatement of tax liability that constitutes a substantial understatement of income tax. This section prescribes the effective date of the penalty. The manner of computing understatements subject to the penalty is set forth in § 1.6661-2. The definition of "substantial authority" is set forth in § 1.6661-3. Rules concerning the adequacy of disclosure are set forth in § 1.6661-4. The treatment of "tax shelters" is provided in § 1.6661-5. The circumstances in which the penalty may or will be waived by the Commissioner are set forth in § 1.6661-6.

(b) *Effective date.* The penalty under section 6661 applies to returns the due date (determined without regard to extensions of the time for filing) of which is after December 31, 1982. The penalty does not apply to amended returns, so-called, if the due date for the return to

which the amended return relates (determined without regard to extensions) is before January 1, 1983.

[T.D. 8017, 50 FR 12014, Mar. 27, 1985]

§ 1.6661-2 Computation of penalty; meaning of terms.

(a) *Amount of penalty.* If there is a substantial understatement of income tax for a taxable year (as defined in paragraph (b) of this section), section 6661 imposes a penalty equal to 10 percent of the understatement of tax liability.

(b) *Substantial understatement.* The term *substantial understatement* means an understatement (as defined in paragraph (c) of this section) that exceeds the greater of—

(1) 10 percent of the tax required to be shown on the return for the taxable year (as defined in paragraph (d)(4) of this section); or

(2) \$5,000 (\$10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)).

(c) *Understatement.* The term *understatement* means the excess of—

(1) The amount of tax required to be shown on the return for the taxable year (as defined in paragraph (d)(4) of this section), over

(2) The amount of tax shown on the return for the taxable year (as defined in paragraph (d)(2) of this section), reduced by any rebate (as defined in paragraph (d)(3) of this section).

(d) *Determination of amounts—*(1) *Amount of tax.* For purposes of section 6661, the amount of tax is the amount of tax imposed by Subtitle A of the Code.

(2) *Tax shown on return.* For purposes of section 6661, the amount of tax shown on the return for the taxable year is determined with the adjustments prescribed in this paragraph (d)(2), without regard to the items described in paragraph (d)(5) of this section, without regard to any net operating loss carryback, tax credit carryback, capital loss carryback, or commodity futures loss carryback (“carryback”), and without regard to any amount of additional tax shown on a return (including an amended return, so-called) filed after the taxpayer is

first contacted by the Internal Revenue Service concerning the tax liability of the taxpayer for the taxable year. See § 1.6661-6(c) for rules relating to waiver of the penalty if the taxpayer files a “qualified amended return.” If no return was filed for the taxable year or if the return (other than a return filed under section 6014) shows no tax due, the amount of tax shown on the return is considered to be zero. The amount of tax shown on the return for the taxable year is determined by computing the tax as if the following items (in addition to the items that were properly reported on the return) had received the proper tax treatment:

(i) Items (other than tax shelter items as defined in § 1.6661-5(c)) for which there is or was substantial authority for the treatment claimed (as provided in § 1.6661-3).

(ii) Items (other than tax shelter items as defined in § 1.6661-5(c)) with respect to which there is adequate disclosure (as provided in § 1.6661-4).

(iii) Tax shelter items (as defined in § 1.6661-5(c)) for which there is or was substantial authority for the treatment claimed (as provided in § 1.6661-3), and with respect to which the taxpayer reasonably believes that the tax treatment of the item was more likely than not the proper tax treatment (as provided in § 1.6661-5(d)).

(iv) Items taken into account in computing the amount of any net operating loss, unused tax credit, or net capital loss for a taxable year the return for which was due (determined without regard to extensions of time for filing) before January 1, 1983 (regardless of whether there is substantial authority or adequate disclosure with respect to such items).

(3) *Rebate.* For purposes of section 6661, the amount of a rebate is the rebate (within the meaning of section 6211(b)(2) and § 301.6211-1(f)), determined as if any items to which the rebate is attributable that are described in paragraphs (d)(2) (i) through (iv) of this section (in addition to the items that were properly reported on the return) had received the proper tax treatment.

(4) *Tax required to be shown.* For purposes of section 6661, the amount of tax required to be shown on the return for the taxable year is the amount of tax