

§ 1.6661-6

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an item is more likely than not the proper tax treatment.

[T.D. 8017, 50 FR 12017, Mar. 27, 1985]

§ 1.6661-6 Waiver of penalty.

(a) *In general.* The Commissioner may waive all or part of the penalty imposed by section 6661 on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith. The circumstances taken into account in determining whether to waive the penalty are described in paragraph (b) of this section. In addition, paragraph (c) of this section describes circumstances in which the penalty will always be waived.

(b) *Reasonable cause and good faith.* In making a determination regarding waiver of the penalty under section 6661, the most important factor in all cases not described in paragraph (c) of this section will be the extent of the taxpayer's effort to assess the taxpayer's proper tax liability under the law. For example, reliance on a position contained in a proposed regulation would ordinarily constitute reasonable cause and good faith. In addition, circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge, and education of the taxpayer. Moreover, a computational or transcriptional error would, in general, indicate reasonable cause and good faith. Reliance on an information return or on the advice of a professional (such as an appraiser, an attorney, or an accountant) would not necessarily constitute a showing of reasonable cause and good faith. Similarly, reliance on facts that, unknown to the taxpayer, are incorrect would not necessarily constitute a showing of reasonable cause and good faith. Reliance on an information return, professional advice, or other facts, however, would constitute a showing of reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. For example, reliance on erroneous information (such as an error relating to the cost of property, the date property was placed in service, or the amount of opening or closing in-

ventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions would, in general, indicate reasonable cause and good faith, provided the corporation had internal controls and procedures, reasonable under the circumstances, that were designed to identify factual errors. Accordingly, waiver of the section 6661 penalty attributable to an understatement caused by such an error would be appropriate. Similarly, a taxpayer's reliance on erroneous information reported on a Form 1099 would indicate reasonable cause and good faith, and waiver would be appropriate, if the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer would know or have reason to know that the information on a Form 1099 is incorrect only if such information is inconsistent with other information reported to the taxpayer or is inconsistent with the taxpayer's knowledge concerning the amount and rate of return of the payor's obligation. In the case of an understatement that is related to an item on the return of a pass-through entity (as defined in § 1.6661-4(e)), the good faith or lack of good faith of the entity generally will be imputed to the taxpayer that has the understatement. Any good faith imputed to the taxpayer under the preceding sentence, however, may be refuted by other factors indicating lack of good faith on the part of the taxpayer.

(c) *Automatic waiver; qualified amended returns*—(1) *In general.* If the taxpayer shows an additional amount of tax or makes adequate disclosure with respect to an item in the manner prescribed in § 1.6661-4 on a qualified amended return, the Commissioner will waive any penalty that would not have been imposed if the additional amount of tax had been shown or the adequate disclosure had been made on the return of the taxpayer. Thus, the entire penalty will be waived if there would not have been a substantial understatement (as defined in paragraph (b) of § 1.6661-2) had the taxpayer shown the additional amount of tax or made the adequate disclosure on the taxpayer's original return.

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(2) *Qualified amended return.* For purposes of this paragraph, a “qualified amended return” is an amended return, so-called, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return and before the earlier of—

(i) The time the taxpayer is first contacted by the Internal Revenue Service concerning an examination of the return; or

(ii) The time any person described in section 6700(a) (relating to the penalty for promoting abusive tax shelters) is first contacted by the Internal Revenue Service concerning an examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan, or arrangement described in section 6700(a)(1)(A).

(3) *Pass-through entities.* For purposes of paragraph (c)(1) of this section, no account is taken of an additional amount of tax shown or disclosure made with respect to an item attributable to a pass-through entity (as defined in §1.6661-4(e)), unless the qualified amended return is filed by the taxpayer before the date such pass-through entity is first contacted by the Internal Revenue Service concerning an examination of the return of which the item is attributable.

(4) *Special rule.* The Commissioner may by revenue procedure prescribe the manner in which this section may apply to particular classes of taxpayers.

[T.D. 8017, 50 FR 12018, Mar. 27, 1985]

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