

section 6662(b)(1) and for a substantial understatement of income tax in section 6662(b)(2) may be avoided by adequate disclosure of a return position only if the position has at least a reasonable basis. See §1.6662-3(c) and §§1.6662-4(e) and (f) for other applicable disclosure rules.

(d) *Reasonable basis.* For purposes of §§1.6662-3(c) and 1.6662-4(e) and (f) (relating to methods of making adequate disclosure), the provisions of §1.6662-3(b)(3) apply in determining whether a return position has a reasonable basis.

[T.D. 8617, 60 FR 45665, Sept. 1, 1995, as amended by T.D. 8790, 63 FR 66435, Dec. 2, 1998]

§ 1.6664-0 Table of contents.

This section lists the captions in §§1.6664-1 through 1.6664-4T.

§ 1.6664-1 Accuracy-related and fraud penalties; definitions and special rules.

- (a) In general.
- (b) Effective date.
 - (1) In general.
 - (2) Reasonable cause and good faith exception to section 6662 penalties.

§ 1.6664-2 Underpayment.

- (a) Underpayment defined.
- (b) Amount of income tax imposed.
- (c) Amount shown as the tax by the taxpayer on his return.
 - (1) Defined.
 - (2) Effect of qualified amended return.
 - (3) Qualified amended return defined.
 - (4) Special rule for qualified amended returns.
- (d) Amounts not so shown previously assessed (or collected without assessment).
- (e) Rebates.
- (f) Underpayments for certain carryback years not reduced by amount of carrybacks.
- (g) Examples.

§ 1.6664-3 Ordering rules for determining the total amount of penalties imposed.

- (a) In general.
- (b) Order in which adjustments are taken into account.
- (c) Manner in which unclaimed prepayment credits are allocated.
- (d) Examples.

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

- (a) In general.
- (b) Facts and circumstances taken into account.
 - (1) In general.
 - (2) Examples.

- (c) Reliance on opinion or advice.
 - (1) Fact and circumstances; minimum requirements.
 - (i) All facts and circumstances considered.
 - (ii) No unreasonable assumptions.
 - (2) Advice defined.
 - (3) Cross-reference.
 - (d) Pass-through items.
 - (e) Special rules for substantial understatement penalty attributable to tax shelter items of corporations.
 - (1) In general; facts and circumstances.
 - (2) Reasonable cause based on legal justification.
 - (i) Minimum requirements.
 - (A) Authority requirement.
 - (B) Belief requirement.
 - (ii) Legal justification defined.
 - (3) Minimum requirements not dispositive.
 - (4) Other factors.
 - (f) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
 - (g) Valuation misstatements of charitable deduction property.
 - (1) In general.
 - (2) Definitions.
 - (i) Charitable deduction property.
 - (ii) Qualified appraisal.
 - (iii) Qualified appraiser.
 - (3) Special rules.

§ 1.6664-4T Reasonable cause and good faith exception to section 6662 penalties

- (a)–(c) [Reserved]
- (d) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

[T.D. 8381, 56 FR 67505, Dec. 31, 1991, as amended by T.D. 8519, 59 FR 4799, Feb. 2, 1994; T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 8656, 61 FR 4885, Feb. 9, 1996; T.D. 8790, 63 FR 66435, Dec. 2, 1998]

§ 1.6664-1 Accuracy-related and fraud penalties; definitions and special rules.

(a) *In general.* Section 6664(a) defines the term “underpayment” for purposes of the accuracy-related penalty under section 6662 and the fraud penalty under section 6663. The definition of “underpayment” of income taxes imposed under subtitle A is set forth in §1.6664-2. Ordering rules for computing the total amount of accuracy-related and fraud penalties imposed with respect to a return are set forth in §1.6664-3. Section 6664(c) provides a reasonable cause and good faith exception to the accuracy-related penalty. Rules relating to the reasonable cause and good faith exception are set forth in §1.6664-4.

§ 1.6664-2

26 CFR Ch. I (4-1-01 Edition)

(b) *Effective date*—(1) *In general.* Sections 1.6664-1 through 1.6664-3 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1989.

(2) *Reasonable cause and good faith exception to section 6662 penalties.* Section 1.6664-4 applies to returns the due date of which (determined without regard to extensions of time for filing) is after September 1, 1995. Except as provided in the last sentence of this paragraph (b)(2), § 1.6664-4 (as contained in 26 CFR part 1 revised April 1, 1995) applies to returns the due date of which (determined without regard to extensions of time for filing) is on or before September 1, 1995 and after December 31, 1989. For transactions occurring after December 8, 1994, § 1.6664-4 (as contained in 26 CFR part 1 revised April 1, 1995) is applied taking into account the changes made to section 6662(d)(2)(C) (relating to the substantial understatement penalty for tax shelter items of corporations) by section 744 of Title VII of the Uruguay Round Agreements Act, Pub. L. 103-465 (108 Stat. 4809).

[T.D. 8381, 56 FR 67506, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45666, Sept. 1, 1995]

§ 1.6664-2 Underpayment.

(a) *Underpayment defined.* In the case of income taxes imposed under subtitle A, an underpayment for purposes of section 6662, relating to the accuracy-related penalty, and section 6663, relating to the fraud penalty, means the amount by which any income tax imposed under this subtitle (as defined in paragraph (b) of the section) exceeds the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return (as defined in paragraph (c) of this section), plus

(ii) Amounts not so shown previously assessed (or collected without assessment) (as defined in paragraph (d) of this section), over

(2) The amount of rebates made (as defined in paragraph (e) of this section).

The definition of underpayment also may be expressed as—

$$\text{Underpayment} = W - (X + Y - Z),$$

where W =the amount of income tax imposed; X =the amount shown as the tax by the taxpayer on his return; Y =amounts not so shown previously assessed (or collected without assessment); and Z =the amount of rebates made.

(b) *Amount of income tax imposed.* For purposes of paragraph (a) of this section, the “amount of income tax imposed” is the amount of tax imposed on the taxpayer under subtitle A for the taxable year, determined without regard to—

(1) The credits for tax withheld under sections 31 (relating to tax withheld on wages) and 33 (relating to tax withheld at source on nonresident aliens and foreign corporations);

(2) Payments of tax or estimated tax by the taxpayer;

(3) Any credit resulting from the collection of amounts assessed under section 6851 as the result of a termination assessment, or section 6861 as the result of a jeopardy assessment; and

(4) Any tax that the taxpayer is not required to assess on the return (such as the tax imposed by section 531 on the accumulated taxable income of a corporation).

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (a) of this section, the “amount shown as the tax by the taxpayer on his return” is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in § 1.6664-2(b) (1), (2), and (3), except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.