

§ 1.6662-1

26 CFR Ch. I (4-1-02 Edition)

(5) Pass-through entities.

§ 1.6662-5 Substantial and gross valuation misstatements under chapter 1.

- (a) In general.
- (b) Dollar limitation.
- (c) Special rules in the case of carrybacks and carryovers.
 - (1) In general.
 - (2) Transition rule for carrybacks to pre-1990 years.
 - (d) Examples.
 - (e) Definitions.
 - (1) Substantial valuation misstatement.
 - (2) Gross valuation misstatement.
 - (3) Property.
 - (f) Multiple valuation misstatements on a return.
 - (1) Determination of whether valuation misstatements are substantial or gross.
 - (2) Application of dollar limitation.
 - (g) Property with a value or adjusted basis of zero.
 - (h) Pass-through entities.
 - (1) In general.
 - (2) Example.
 - (i) [Reserved]
 - (j) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
 - (k) Returns affected.

§ 1.6662-5T Substantial and gross valuation misstatements under chapter 1 (temporary).

- (a) through (e)(3) [Reserved]
- (e)(4) Tests related to section 482.
 - (i) Substantial valuation misstatement.
 - (ii) Gross valuation misstatement.
 - (iii) Property.
 - (f) through (i) [Reserved]
 - (j) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

§ 1.6662-6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

- (a) In general.
 - (1) Purpose and scope.
 - (2) Reported results.
 - (3) Identical terms used in the section 482 regulations.
 - (b) The transactional penalty.
 - (1) Substantial valuation misstatement.
 - (2) Gross valuation misstatement.
 - (3) Reasonable cause and good faith.
 - (c) Net adjustment penalty.
 - (1) Net section 482 adjustment.
 - (2) Substantial valuation misstatement.
 - (3) Gross valuation misstatement.
 - (4) Setoff allocation rule.
 - (5) Gross receipts.
 - (6) Coordination with reasonable cause exception under section 6664(c).
 - (7) Examples.
 - (d) Amounts excluded from net section 482 adjustments.

- (1) In general.
- (2) Application of a specified section 482 method.
 - (i) In general.
 - (ii) Specified method requirement.
 - (iii) Documentation requirement.
 - (A) In general.
 - (B) Principal documents.
 - (C) Background documents.
 - (3) Application of an unspecified method.
 - (i) In general.
 - (ii) Unspecified method requirement.
 - (A) In general.
 - (B) Specified method potentially applicable.
 - (C) No specified method applicable.
 - (iii) Documentation requirement.
 - (A) In general.
 - (B) Principal and background documents.
 - (4) Certain foreign to foreign transactions.
 - (5) Special rule.
 - (6) Examples.
 - (e) Special rules in the case of carrybacks and carryovers.
 - (f) Rules for coordinating between the transactional penalty and the net adjustment penalty.
 - (1) Coordination of a net section 482 adjustment subject to the net adjustment penalty and a gross valuation misstatement subject to the transactional penalty.
 - (2) Coordination of net section 482 adjustment subject to the net adjustment penalty and substantial valuation misstatements subject to the transactional penalty.
 - (3) Examples.
 - (g) Effective date.

§ 1.6662-7 Omnibus Budget Reconciliation Act of 1993 changes to the accuracy-related penalty.

- (a) Scope.
- (b) No disclosure exception for negligence penalty.
- (c) Disclosure standard for other penalties is reasonable basis.
- (d) Reasonable basis.

[T.D. 8381, 56 FR 67497, Dec. 31, 1991; T.D. 8381, 57 FR 6165, Feb. 20, 1992, as amended by T.D. 8519, 59 FR 4794, Feb. 2, 1994; T.D. 8533, 59 FR 12548, Mar. 17, 1994; T.D. 8551, 59 FR 35031, July 8, 1994; T.D. 8617, 60 FR 45663, Sept. 1, 1995; T.D. 8656, 61 FR 4879, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996; T.D. 8790, 63 FR 66434, Dec. 2, 1998]

§ 1.6662-1 Overview of the accuracy-related penalty.

Section 6662 imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following:

- (a) Negligence or disregard of rules or regulations;

(b) Any substantial understatement of income tax;

(c) Any substantial valuation misstatement under chapter 1;

(d) Any substantial overstatement of pension liabilities; or

(e) Any substantial estate or gift tax valuation understatement.

Sections 1.6662-1 through 1.6662-5 address only the first three components of the accuracy-related penalty, *i.e.*, the penalties for negligence or disregard of rules or regulations, substantial understatements of income tax, and substantial (or gross) valuation misstatements under chapter 1. The penalties for disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in § 1.6662-3(c) and §§ 1.6662-4(e) and (f), respectively. The penalties for negligence and for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure. No accuracy-related penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy-related penalty is set forth in § 1.6664-4.

[T.D. 8381, 56 FR 67498, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45664, Sept. 1, 1995]

§ 1.6662-2 Accuracy-related penalty.

(a) *In general.* Section 6662(a) imposes an accuracy-related penalty on any portion of an underpayment of tax (as defined in section 6664(a) and § 1.6664-2) required to be shown on a return if such portion is attributable to one or more of the following types of misconduct:

(1) Negligence or disregard of rules or regulations (see § 1.6662-3);

(2) Any substantial understatement of income tax (see § 1.6662-4); or

(3) Any substantial (or gross) valuation misstatement under chapter 1 (“substantial valuation misstatement” or “gross valuation misstatement”), provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied (see § 1.6662-5).

The accuracy-related penalty applies only in cases in which a return of tax is filed, except that the penalty does not apply in the case of a return prepared by the Secretary under the authority of section 6020(b). The accuracy-related penalty under section 6662 and the penalty under section 6651 for failure to timely file a return of tax may both be imposed on the same portion of an underpayment if a return is filed, but is filed late. The fact that a return is filed late, however, is not taken into account in determining whether an accuracy-related penalty should be imposed. No accuracy-related penalty may be imposed on any portion of an underpayment of tax on which the fraud penalty set forth in section 6663 is imposed.

(b) *Amount of penalty—(1) In general.* The amount of the accuracy-related penalty is 20 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to any of the types of misconduct listed in paragraphs (a)(1) through (a)(3) of this section, except as provided in paragraph (b)(2) of this section.

(2) *Increase in penalty for gross valuation misstatement.* In the case of a gross valuation misstatement, as defined in section 6662(h)(2) and § 1.6662-5(e)(2), the amount of the accuracy-related penalty is 40 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to the gross valuation misstatement, provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied.

(c) *No stacking of accuracy-related penalty components.* The maximum accuracy-related penalty imposed on a portion of an underpayment may not exceed 20 percent of such portion (40 percent of the portion attributable to a gross valuation misstatement), notwithstanding that such portion is attributable to more than one of the types of misconduct described in paragraph (a) of this section. For example, if a portion of an underpayment of tax required to be shown on a return is attributable both to negligence and a substantial understatement of income tax, the maximum accuracy-related penalty is 20 percent of such portion.