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[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.

(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.

(2) *Effect of qualified amended return.* The “amount shown as the tax by the taxpayer on his return” includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined.* A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—