$70,000 and tax liability to $26,318. The increase in taxable income is attributable to a $20,000 adjustment for a valuation overstatement and a $10,000 adjustment not related to a valuation overstatement. There are no adjustments under paragraph (d)(2) of this section. Since the amount of the understatement, $14,910 ($26,318–$11,408), exceeds the greater of $2,631.80 (10 percent of the tax required to be shown) or $5,000, there is a substantial understatement. Assume that under section 6659 the $20,000 adjustment for the valuation overstatement results in a $10,000 underpayment attributable to a valuation overstatement on which the section 6659 penalty is imposed. The amount of the understatement on which the section 6661 penalty is imposed is $4,910. (The amount by which the $14,910 understatement exceeds the $10,000 underpayment to which the section 6659 penalty applies.) The amount of the section 6661 penalty is $491 ($4,910×.10).

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

§ 1.6661–3 Substantial authority.

(a) *General rule*—(1) *Effect of having substantial authority*. If there is or was substantial authority for the tax treatment of an item (other than a tax shelter item as defined in § 1.6661–5(c)), the item is treated as if it were shown properly on the return for the taxable year in computing the amount of tax shown on the return. Thus, for purposes of section 6661, the tax attributable to the item is not included in the understatement for the year. (See paragraph (d)(2) of § 1.6661–2.)

(2) *Substantial authority standard*. The substantial authority standard is less stringent than a ''more likely than not'' standard (that is, a greater than 50-percent likelihood of being upheld in litigation), but stricter than a reasonable basis standard (the standard which, in general, will prevent imposition of the penalty under section 6653 (a), relating to negligence or international disregard of rules and regulations). Thus, a position with respect to the tax treatment of an item that is arguable but fairly unlikely to prevail in court would satisfy a reasonable basis standard, but not the substantial authority standard.

(b) *Determination of whether substantial authority is present*—(1) *Evaluation of authorities*. There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary positions. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists and the weight of those authorities is determined in light of the pertinent facts and circumstances in the manner prescribed in paragraph (b)(3) of this section. There may be substantial authority for more than one position with respect to the same item. The taxpayer's belief that the authorities with respect to the tax treatment of an item constitute substantial authority is not taken into account in determining whether there is substantial authority.

(2) *Types of authority*. In determining whether there is substantial authority (other than in cases described in paragraph (b) (4) (i) of this section), only the following will be considered authority. Applicable provisions of the Internal Revenue Code and other statutory provisions; temporary and final regulations construing such statutes; court cases; administrative pronouncements (including revenue rulings and revenue procedures); tax treaties and regulations thereunder, and Treasury Department and other official explanations of such treaties; and Congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill's managers. Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by other tax professionals, descriptions of statutes prepared after enactment (such as ''General Explanations'' prepared by the Staff of the joint Committee on Taxation), general counsel memoranda (other than those published in pre-1955 volumes of the Cumulative Bulletin), actions on decisions, technical memoranda, written determinations (except as provided in paragraph (b)(4)(i) of this section), and proposed regulations are not authority. The authorities underlying such expressions of opinion where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an

item. (See §1.6661–6(b), however, regarding waiver of the penalty when the taxpayer relies on proposed regulations.)

(3) *Nature of analysis*. Except as otherwise provided in this section, the weight of the authorities for the tax treatment of an item is determined by the same analysis that a court would be expected to follow in evaluating the tax treatment of the item. Thus, the weight of authorities depends on their persuasiveness and relevance as well as their source. For example, a case or revenue ruling having some facts in common with the tax treatment at issue would not be considered particularly relevant if the authority is materially distinguishable on its facts, or is otherwise inapplicable to the tax treatment at issue. Similarly, an authority that merely states a conclusion ordinarily would be given less weight than an authority that reaches its conclusion by cogently relating the applicable law to pertinent facts. There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

(4) *Special rules*—(i) *Written determinations*. There is substantial authority for the tax treatment of an item if the treatment is supported by the holding of a ruling or a determination letter (as defined in §301.6110–2 (d) and (e)) issued to the taxpayer, by the holding of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior taxable year of the taxpayer (''written determinations''). The preceding sentence shall not apply, however, if there has been a misstatement or omission of a material fact, the facts that subsequently develop are materially different from the facts on which the written determination was based, or authority supporting a contrary position has arisen since the date of the written determination.

(ii) *Taxpayer's jurisdiction*. The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether there is substantial authority for the tax treatment of an item. Notwithstanding the preceding sentence, however there is substantial authority for the tax treatment of an item if the treatment is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(iii) *When substantial authority determined*. For purposes of section 6661, there is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is filed or there was substantial authority on the last day of the taxable year to which the return relates.

[T.D. 8017, 50 FR 12016, Mar. 27, 1985]

§1.6661–4 Disclosure of certain information.

(a) *In general*. Items (other than tax shelter items as defined in §1.6661–5(c)) for which there is adequate disclosure are treated as if such items were shown properly on the return for the taxable year in computing the amount of tax shown on the return. Thus, for purposes of section 6661, the tax attributable to such items is not included in the understatement for the year. (See paragraph (d)(2) of §1.6661–2.) Disclosure is adequate with respect to the tax treatment of an item on a return only if it is made on such return or in a statement attached thereto. Thus, disclosure with respect to a recurring item, such as the basis of recovery property, made on a return or statement attached thereto for one taxable year is not adequate disclosure with respect to the item for any other taxable year. (See paragraph (d) of this section for special rules relating to disclosure with respect to carrybacks and carryovers.)

(b) *Disclosure in attached statement*—(1) *In general*. Disclosure will be adequate with respect to an item (or group of similar items, such as the specific deduction of business bad debts or the deduction of amounts paid or incurred for supplies by a taxpayer engaged in business), if it is made on a properly completed Form 8275 or if it takes the