

## § 1.6664-1

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- (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; T.D. 9109, 68 FR 75128, Dec. 30, 2003; T.D. 9309, 72 FR 903, Jan. 9, 2007]

## § 1.6664-1 Accuracy-related and fraud penalties; definitions, effective date 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.* (i) *For returns due after September 1, 1995.* 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

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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).

(ii) *For returns filed after December 31, 2002.* Sections 1.6664-4(c) (relating to relying on opinion or advice) and (d) (relating to underpayments attributable to reportable transactions) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (b)(2)(i) of this section, §1.6664-4 (as contained in 26 CFR part 1 revised April 1, 2003) applies to returns filed with respect to transactions entered into before January 1, 2003.

(3) *Qualified amended returns.* Sections 1.6664-2(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D)(2), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664-2(c)(3)(i)(D)(1) and (c)(3)(ii)(B) and (C) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. The applicability date for §1.6664-2(c)(3)(ii)(A) varies depending upon which event occurs under §1.6664-2(c)(3)(i). For purposes of §1.6664-2(c)(3)(ii)(A), the date described in §1.6664-2(c)(3)(i)(D)(1) is applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004. For purposes of §1.6664-2(c)(3)(ii)(A), the dates described in §1.6664-2(c)(3)(i)(A), (B), (C), (D)(2), and (E) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Section 1.6664-2(c)(1) through (c)(3), as contained in 26 CFR part 1 revised as of April 1, 2004 and as modified by Notice 2004-38, 2004-1 C.B. 949, applies with respect to re-

turns and requests for administrative adjustment filed on or after April 30, 2004 and before March 2, 2005. Section 1.6664-2(c)(1) through (3), as contained in 26 CFR part 1 revised as of April 30, 2004, applies with respect to returns and requests for administrative adjustment filed before April 30, 2004.

[T.D. 8381, 56 FR 67506, Dec. 31, 1991, as amended by T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 9109, 68 FR 75128, Dec. 30, 2003; T.D. 9309, 72 FR 903, Jan. 9, 2007]

**§ 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;