

## § 1.6662-7

for purposes of any additional penalty under section 6662.

(g) *Effective date.* This section is effective February 9, 1996. However, taxpayers may elect to apply this section to all open taxable years beginning after December 31, 1993.

[T.D. 8656, 61 FR 4880, Feb. 9, 1996; T.D. 8656, 61 FR 14248, Apr. 1, 1996; 62 FR 46877, Sept. 5, 1997]

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

(a) *Scope.* The Omnibus Budget Reconciliation Act of 1993 made certain changes to the accuracy-related penalty in section 6662. This section provides rules reflecting those changes.

(b) *No disclosure exception for negligence penalty.* The penalty for negligence in section 6662(b)(1) may not be avoided by disclosure of a return position.

(c) *Disclosure standard for other penalties is reasonable basis.* The penalties for disregarding rules or regulations in 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.
  - (i) For returns due after September 1, 1995.
  - (ii) For returns filed after December 31, 2002.

## 26 CFR Ch. I (4-1-05 Edition)

### § 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.
    - (i) Fact and circumstances; minimum requirements.
    - (i) All facts and circumstances considered.
    - (ii) No unreasonable assumptions.
    - (iii) Reliance on the invalidity of a regulation.
  - (2) Advice defined.
  - (3) Cross-reference.
  - (d) Underpayments attributable to reportable transactions.
  - (e) Pass-through items.
  - (f) 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.
      - (g) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
      - (h) Valuation misstatements of charitable deduction property.
        - (1) In general.
        - (2) Definitions.
          - (i) Charitable deduction property.
          - (ii) Qualified appraisal.