

United States Statutes

Title 26. INTERNAL REVENUE CODE

Subtitle F. Procedure and Administration

Chapter 68. ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Subchapter A. Additions to the Tax and Additional Amounts

Part II. ACCURACY-RELATED AND FRAUD PENALTIES

Current through P.L. 113-125

§ 6662. Imposition of accuracy-related penalty on underpayments

(a)

Imposition of penalty

If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

(b)

Portion of underpayment to which section applies

This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(1)

Negligence or disregard of rules or regulations.

(2)

Any substantial understatement of income tax.

(3)

Any substantial valuation misstatement under chapter 1.

(4)

Any substantial overstatement of pension liabilities.

(5)

Any substantial estate or gift tax valuation understatement.

(6)

Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.

(7)

Any undisclosed foreign financial asset understatement.

This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 6663. Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A.

(c)

Negligence

For purposes of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term "disregard" includes any careless, reckless, or intentional disregard.

(d)

Substantial understatement of income tax

(1)

Substantial understatement

(A)

In general

For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of-

(i)

10 percent of the tax required to be shown on the return for the taxable year, or

(ii)

\$5,000.

(B)

Special rule for corporations

In the case of a corporation other than an S corporation or

a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of-

(i)

10 percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000), or

(ii)

\$10,000,000.

(2)

Understatement

(A)

In general

For purposes of paragraph (1), the term "understatement" means the excess of-

(i)

the amount of the tax required to be shown on the return for the taxable year, over

(ii)

the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.

(B)

Reduction for understatement due to position of taxpayer or disclosed item

The amount of the understatement under subparagraph (A) shall be reduced by that portion of the understatement which is attributable to-

(i)

the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii)

any item if-

(I)

the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement

attached to the return, and

(II)

there is a reasonable basis for the tax treatment of such item by the taxpayer.

For purposes of clause (ii)(II), in no event shall a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation.

(C)

Reduction not to apply to tax shelters

(i)

In general

Subparagraph (B) shall not apply to any item attributable to a tax shelter.

(ii)

Tax shelter

For purposes of clause (i), the term "tax shelter" means-

(I)

a partnership or other entity,

(II)

any investment plan or arrangement, or

(III)

any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

(3)

Secretarial list

The Secretary may prescribe a list of positions which the Secretary believes do not meet 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(2), 1 and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.

(e)

Substantial valuation misstatement under chapter 1

(1)

In general

For purposes of this section, there is a substantial valuation misstatement under chapter 1 if-

(A)

the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

(B)

(i)

the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

(ii)

the net section 482 transfer price adjustment for the taxable year exceeds the lesser of \$5,000,000 or 10 percent of the taxpayer's gross receipts.

(2)

Limitation

No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

(3)

Net section 482 transfer price adjustment

For purposes of this subsection-

(A)

In general

The term "net section 482 transfer price adjustment" means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

(B)

Certain adjustments excluded in determining

threshold

For purposes of determining whether the threshold requirements of paragraph (1)(B)(ii) are met, the following shall be excluded:

(i)

Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if-

(I)

it is established that the taxpayer determined such price in accordance with a specific pricing method set forth in the regulations prescribed under section 482 and that the taxpayer's use of such method was reasonable,

(II)

the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such a method and which establishes that the use of such method was reasonable, and

(III)

the taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation.

(ii)

Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to a redetermination of price where such price was not determined in accordance with such a specific pricing method if-

(I)

the taxpayer establishes that none of such pricing methods was likely to result in a price that would clearly reflect income, the taxpayer used another pricing method to determine such price, and such other pricing method was likely to result in a price that would clearly reflect income,

(II)

the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such other method and which establishes that the requirements of subclause (I) were satisfied, and

(III)

the taxpayer provides such documentation to the Secretary within 30 days of request for such

documentation.

(iii)

Any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

(C)

Special rule

If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph.

(D)

Coordination with reasonable cause exception

For purposes of section 6664(c) the taxpayer shall not be treated as having reasonable cause for any portion of an underpayment attributable to a net section 482 transfer price adjustment unless such taxpayer meets the requirements of clause (i), (ii), or (iii) of subparagraph (B) with respect to such portion.

(f)

Substantial overstatement of pension liabilities

(1)

In general

For purposes of this section, there is a substantial overstatement of pension liabilities if the actuarial determination of the liabilities taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a) is 200 percent or more of the amount determined to be the correct amount of such liabilities.

(2)

Limitation

No penalty shall be imposed by reason of subsection (b)(4) unless the portion of the underpayment for the taxable year attributable to substantial overstatements of pension liabilities exceeds \$1,000.

(g)

Substantial estate or gift tax valuation understatement

(1)

In general

For purposes of this section, there is a substantial estate or gift tax valuation understatement if the value of any property claimed on any return of tax imposed by subtitle B is 65 percent or less of the amount determined to be the correct amount of such valuation.

(2)

Limitation

No penalty shall be imposed by reason of subsection (b)(5) unless the portion of the underpayment attributable to substantial estate or gift tax valuation understatements for the taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent) exceeds \$5,000.

(h)

Increase in penalty in case of gross valuation misstatements

(1)

In general

To the extent that a portion of the underpayment to which this section applies is attributable to one or more gross valuation misstatements, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(2)

Gross valuation misstatements

The term "gross valuation misstatements" means-

(A)

any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting-

(i)

in paragraph (1)(A), "200 percent" for "150 percent",

(ii)

in paragraph (1)(B)(i)-

(I)

"400 percent" for "200 percent", and

(II)

"25 percent" for "50 percent", and

(iii)

in paragraph (1)(B)(ii)-

(I)

"\$20,000,000" for "\$5,000,000", and

(II)

"20 percent" for "10 percent".

(B)

any substantial overstatement of pension liabilities as determined under subsection (f) by substituting "400 percent" for "200 percent", and

(C)

any substantial estate or gift tax valuation understatement as determined under subsection (g) by substituting "40 percent" for "65 percent".

(j)

2 Undisclosed foreign financial asset understatement

(1)

In general

For purposes of this section, the term "undisclosed foreign financial asset understatement" means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

(2)

Undisclosed foreign financial asset

For purposes of this subsection, the term "undisclosed foreign financial asset" means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.

(3)

Increase in penalty for undisclosed foreign financial asset understatements

In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(i)

3 Increase in penalty in case of nondisclosed noneconomic substance transactions

(1)

In general

In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(2)

Nondisclosed noneconomic substance transactions

For purposes of this subsection, the term "nondisclosed noneconomic substance transaction" means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.

(3)

Special rule for amended returns

In no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

1 See References in Text note below.

2 So in original. Subsec.

(i)

is set out after subsec. (j).

3 So in original. Subsec. (j) is set out before subsec.

(i)

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Cite as 26 U.S.C. § 6662

Source: Added Pub. L. 101-2391989; amended Pub. L. 101-5081990; Pub. L. 103-661993; Pub. L. 103-4651994; Pub. L. 105-341997; Pub. L. 108-3572004; Pub. L. 109-1352005; Pub. L. 109-2802006; Pub. L. 111-147Mar. 18, 2010, 124 Stat. 110; Pub. L. 111-152Mar. 30, 2010, 124 Stat. 1068, 1069.

Notes from the Office of Law Revision Counsel

current through 7/7/2014

REFERENCES IN TEXT

Section 6664(d)(2), referred to in subsec. (d)(3), was redesignated as section 6664(d)(3) by Pub. L. 111-152 Mar. 30, 2010, 124 Stat. 1069.

CODIFICATION

Section 1409(b)(1), (2) of Pub. L. 111-152, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment notes below.

Section 1219(a)(1), (2) of Pub. L. 109-280, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

PRIOR PROVISIONS

A prior section 6662, acts Aug. 16, 1954, ch. 736, 68A Stat. 827, §6659; May 14, 1960, Pub. L. 86-470; Dec. 30, 1969, Pub. L. 91-172; Sept. 2, 1974, Pub. L. 93-406; renumbered §6660, Aug. 13, 1981, Pub. L. 97-34, title VII, §722(a)(1), 95 Stat. 341; renumbered §6662, Sept. 3, 1982, Pub. L. 97-248, title III, §323(a), 96 Stat. 613, directed that additions be treated as tax and set procedure for assessing certain additions to tax, prior to repeal by Pub. L. 101-239 1989, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989. See section 6665 of this title.

AMENDMENTS

2010-Subsec. (b)(6). Pub. L. 111-152 added par. (6). See Codification note above.

Subsec. (b)(7). Pub. L. 111-147 which directed amendment of subsec. (b) by adding par. (7) after par. (6), was executed by adding par. (7) after par. (5) to reflect the probable intent of Congress and the subsequent addition of par. (6) by Pub. L. 111-152. See above.

Subsec. (i). Pub. L. 111-152 added subsec. (i). See Codification note above.

Subsec. (j). Pub. L. 111-147 added subsec. (j).

2006-Subsec. (e)(1)(A). Pub. L. 109-280 substituted "150 percent" for "200 percent". See Codification note above.

Subsec. (g)(1). Pub. L. 109-280 substituted "65 percent" for "50 percent". See Codification note above.

Subsec. (h)(2)(A)(i), (ii). Pub. L. 109-280 amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) '400 percent' for '200 percent' each place it appears,

"(ii) '25 percent' for '50 percent', and".

See Codification note above.

Subsec. (h)(2)(C). Pub. L. 109-280 substituted " '40 percent' for '65 percent' " for " '25 percent' for '50 percent' ". See Codification note above.

2005-Subsec. (b). Pub. L. 109-135 inserted at end "Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A."

Subsec. (d)(3). Pub. L. 109-135 struck out "the" before "1 or more".

2004- Pub. L. 108-357 inserted "on underpayments" after "penalty" in section catchline.

Subsec. (d)(1)(B). Pub. L. 108-357 reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), paragraph (1) shall be applied by substituting '\$10,000' for '\$5,000'."

Subsec. (d)(2)(A). Pub. L. 108-357 inserted concluding provisions.

Subsec. (d)(2)(C). Pub. L. 108-357 amended subpar. (C) generally, substituting provisions relating to inapplicability of subpar. (B) to any item attributable to a tax shelter and defining the term "tax shelter" for provisions relating to, in the case of any item of a taxpayer other than a corporation which is attributable to a tax shelter, inapplicability of subpar. (B)(ii) and inapplicability of subpar. (B)(i), unless the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment, inapplicability of subpar. (B) to any item of a corporation which is attributable to a tax shelter, and provisions defining the term "tax shelter".

Subsec. (d)(2)(D). Pub. L. 108-357 struck out heading and text of subpar. (D). Text read as follows: "The Secretary shall prescribe (and revise not less frequently than annually) a list of positions-

"(i) for which the Secretary believes there is not substantial authority, and

"(ii) which affect a significant number of taxpayers.

Such list (and any revision thereof) shall be published in the Federal Register."

Subsec. (d)(3). Pub. L. 108-357 added par. (3).

1997-Subsec. (d)(2)(B). Pub. L. 105-34 inserted concluding provisions.

Subsec. (d)(2)(C)(iii). Pub. L. 105-34 substituted "a significant purpose" for "the principal purpose" in concluding provisions.

1994-Subsec. (d)(2)(C)(i). Pub. L. 103-465 substituted "In the case of any item of a taxpayer other than a corporation which is" for "In the case of any item" in introductory provisions.

Subsec. (d)(2)(C)(ii). Pub. L. 103-465 added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (d)(2)(C)(iii). Pub. L. 103-465 redesignated cl. (ii) as (iii) and substituted "this subparagraph" for "clause (i)" in introductory provisions.

1993-Subsec. (d)(2)(B)(ii). Pub. L. 103-66 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return."

Subsec. (e)(1)(B)(ii). Pub. L. 103-66 amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the net section 482 transfer price adjustment for the taxable year exceeds \$10,000,000."

Subsec. (e)(3)(B). Pub. L. 103-66 amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "For purposes of determining whether the \$10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded-

"(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer's determination of such price and that the taxpayer acted in good faith with respect to such price, and

"(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States."

Subsec. (e)(3)(D). Pub. L. 103-66 added subpar. (D).

Subsec. (h)(2)(A)(iii). Pub. L. 103-66 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "\$20,000,000" for "\$10,000,000".

1990-Subsec. (b)(3). Pub. L. 101-508 amended par. (3) generally, substituting "misstatement" for

"overstatement".

Subsec. (e). Pub. L. 101-508 substituted "misstatement" for "overstatement" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.-For purposes of this section, there is a substantial valuation overstatement under chapter 1 if the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

"(2) LIMITATION.-No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation overstatements under chapter 1 exceeds \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542))."

Subsec. (h)(2)(A). Pub. L. 101-508 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "any substantial valuation overstatement under chapter 1 as determined under subsection (e) by substituting '400 percent' for '200 percent'."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-152 Mar. 30, 2010, 124 Stat. 1070, provided that:

"(1) IN GENERAL.-Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6662A, 6664, 6676, and 7701 of this title] shall apply to transactions entered into after the date of the enactment of this Act [Mar. 30, 2010].

"(2) UNDERPAYMENTS.-The amendments made by subsections (b) and (c)(1) [amending this section and sections 6662A and 6664 of this title] shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

"(3) UNDERSTATEMENTS.-The amendments made by subsection (c)(2) [amending section 6664 of this title] shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

"(4) REFUNDS AND CREDITS.-The amendment made by subsection (d) [amending section 6676 of this title] shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act."

Pub. L. 111-147 Mar. 18, 2010, 124 Stat. 111, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after

the date of the enactment of this Act [Mar. 18, 2010]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to returns filed after Aug. 17, 2006, with special rule for certain easements, see section 1219(e)(1), (3) of Pub. L. 109-280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(x)(1) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-3572004, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-3572004, as amended by Pub. L. 109-1352005, provided that:

"(1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section [enacting section 6662A of this title and amending this section and section 6664 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

"(2) DISQUALIFIED OPINIONS.-Section 6664(d)(3)(B) of the Internal Revenue Code of 1986 [now section 6664(d)(4)(B)] (as added by subsection (c)) shall not apply to the opinion of a tax advisor if-

"(A) the opinion was provided to the taxpayer before the date of the enactment of this Act,

"(B) the opinion relates to one or more transactions all of which were entered into before such date, and

"(C) the tax treatment of items relating to each such transaction was included on a return or statement filed by the taxpayer before such date."

Pub. L. 108-3572004, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to items with respect to transactions entered into after Aug. 5, 1997, see section 1028(e)(2) of Pub. L. 105-34, set out as a note under section 6111 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-4651994, provided that: "The amendments made by this section [amending this section] shall apply to items related to transactions occurring after the date of

the enactment of this Act [Dec. 8, 1994]."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-661993, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

Pub. L. 103-661993, provided that: "The amendment made by this section [amending this section] shall apply to returns the due dates for which (determined without regard to extensions) are after December 31, 1993."

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-5081990, provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 5, 1990]."

EFFECTIVE DATE

Part applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101-239, set out as an Effective Date of 1989 Amendment note under section 461 of this title.