

“(i) SECTION 6662(e).—Section 6662(e) shall not apply to any portion of an understatement on which a penalty is imposed under this section.

“(ii) SECTION 6662(h).—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662(h).”

**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-152 applicable to underpayments attributable to transactions entered into after Mar. 30, 2010, see section 1409(e)(2) of Pub. L. 111-152, set out as a note under section 6662 of this title.

**EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, 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**

Section applicable to taxable years ending after Oct. 22, 2004, see section 812(f) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 6662 of this title.

**REPORT ON TAX SHELTER PENALTIES AND CERTAIN OTHER ENFORCEMENT ACTIONS**

Pub. L. 111-240, title II, § 2103, Sept. 27, 2010, 124 Stat. 2564, provided that:

“(a) **IN GENERAL.**—The Commissioner of Internal Revenue, in consultation with the Secretary of the Treasury, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on the penalties assessed by the Internal Revenue Service during the preceding year under each of the following provisions of the Internal Revenue Code of 1986:

“(1) Section 6662A (relating to accuracy-related penalty on understatements with respect to reportable transactions).

“(2) Section 6700(a) (relating to promoting abusive tax shelters).

“(3) Section 6707 (relating to failure to furnish information regarding reportable transactions).

“(4) Section 6707A (relating to failure to include reportable transaction information with return).

“(5) Section 6708 (relating to failure to maintain lists of advisees with respect to reportable transactions).

“(b) **ADDITIONAL INFORMATION.**—The report required under subsection (a) shall also include information on the following with respect to each year:

“(1) Any action taken under section 330(b) [now 330(c)] of title 31, United States Code, with respect to any reportable transaction (as defined in section 6707A(c) of the Internal Revenue Code of 1986).

“(2) Any extension of the time for assessment of tax enforced, or assessment of any amount under such an extension, under paragraph (10) of section 6501(c) of the Internal Revenue Code of 1986.

“(c) **DATE OF REPORT.**—The first report required under subsection (a) shall be submitted not later than December 31, 2010.”

**§ 6663. Imposition of fraud penalty**

**(a) Imposition of penalty**

If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

**(b) Determination of portion attributable to fraud**

If the Secretary establishes that any portion of an underpayment is attributable to fraud, the

entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.

**(c) Special rule for joint returns**

In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse.

(Added Pub. L. 101-239, title VII, § 7721(a), Dec. 19, 1989, 103 Stat. 2397.)

**§ 6664. Definitions and special rules**

**(a) Underpayment**

For purposes of this part, the term “underpayment” means the amount by which any tax imposed by this title exceeds the excess of—

(1) the sum of—

(A) the amount shown as the tax by the taxpayer on his return, plus

(B) amounts not so shown previously assessed (or collected without assessment), over

(2) the amount of rebates made.

For purposes of paragraph (2), the term “rebate” means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (1) over the rebates previously made. A rule similar to the rule of section 6211(b)(4) shall apply for purposes of this subsection.

**(b) Penalties applicable only where return filed**

The penalties provided in this part shall apply only in cases where a return of tax is filed (other than a return prepared by the Secretary under the authority of section 6020(b)).

**(c) Reasonable cause exception for underpayments**

**(1) In general**

No penalty shall be imposed under section 6662 or 6663 with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

**(2) Exception**

Paragraph (1) shall not apply to any portion of an underpayment which is attributable to one or more transactions described in section 6662(b)(6).

**(3) Special rule for certain valuation overstatements**

In the case of any underpayment attributable to a substantial or gross valuation overstatement under chapter 1 with respect to charitable deduction property, paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if—

(A) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and

(B) in addition to obtaining such appraisal, the taxpayer made a good faith investiga-