

imposed under section 6662 if the rate of the penalty is determined under subsections (h) or (i) of section 6662.

(3) Special rule for amended returns

Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement 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.

(Added Pub. L. 108-357, title VIII, §812(a), Oct. 22, 2004, 118 Stat. 1577; amended Pub. L. 109-135, title IV, §403(x)(2), Dec. 21, 2005, 119 Stat. 2629; Pub. L. 111-152, title I, §1409(b)(3), Mar. 30, 2010, 124 Stat. 1069; Pub. L. 113-295, div. A, title II, §220(w), Dec. 19, 2014, 128 Stat. 4036.)

CODIFICATION

Section 1409(b)(3) of Pub. L. 111-152, which directed the amendment of section 6662A without specifying the act to be amended, was executed to this section, which is section 6662A of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113-295 substituted “section 6664(d)(3)(A)” for “section 6664(d)(2)(A)”.

2010—Subsec. (e)(2)(B). Pub. L. 111-152 substituted “certain increased underpayment penalties” for “gross valuation misstatement penalty” in heading and “subsections (h) or (i) of section 6662” for “section 6662(h)” in text. See Codification note above.

2005—Subsec. (e)(2). Pub. L. 109-135 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

“(C) COORDINATION WITH VALUATION PENALTIES.—

“(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.)

EFFECTIVE DATE

Section 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.

§ 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—