

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—

(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 investigation of the value of the contributed property.

(4) Definitions

For purposes of this subsection—

(A) Charitable deduction property

The term “charitable deduction property” means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of paragraph (3), such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(B) Qualified appraisal

The term “qualified appraisal” has the meaning given such term by section 170(f)(11)(E)(i).

(C) Qualified appraiser

The term “qualified appraiser” has the meaning given such term by section 170(f)(11)(E)(ii).

(d) Reasonable cause exception for reportable transaction understatements

(1) In general

No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement 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 a reportable transaction understatement which is attributable to one or more transactions described in section 6662(b)(6).

(3) Special rules

Paragraph (1) shall not apply to any reportable transaction understatement unless—

(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

(B) there is or was substantial authority for such treatment, and

(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

(4) Rules relating to reasonable belief

For purposes of paragraph (3)(C)—

(A) In general

A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B) Certain opinions may not be relied upon

(i) In general

An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

(I) the tax advisor is described in clause (ii), or

(II) the opinion is described in clause (iii).

(ii) Disqualified tax advisors

A tax advisor is described in this clause if the tax advisor—

(I) is a material advisor (within the meaning of section 6111(b)(1)) and par-

ticipates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

(iii) Disqualified opinions

For purposes of clause (i), an opinion is disqualified if the opinion—

(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the Secretary may prescribe.

(Added Pub. L. 101-239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2398; amended Pub. L. 108-357, title VIII, §812(c), Oct. 22, 2004, 118 Stat. 1579; Pub. L. 109-280, title XII, §1219(a)(3), (c)(2), Aug. 17, 2006, 120 Stat. 1084, 1085; Pub. L. 111-152, title I, §1409(c), Mar. 30, 2010, 124 Stat. 1069; Pub. L. 114-113, div. Q, title II, §209(a), Dec. 18, 2015, 129 Stat. 3084.)

CODIFICATION

Section 1409(c) of Pub. L. 111-152, which directed the amendment of section 6664 without specifying the act to be amended, was executed to this section, which is section 6664 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment notes below.

Section 1219(a)(3), (c)(2) of Pub. L. 109-280, which directed the amendment of section 6664 without specifying the act to be amended, was executed to this section, which is section 6664 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-113 inserted at end “A rule similar to the rule of section 6211(b)(4) shall apply for purposes of this subsection.”

2010—Subsec. (c)(2) to (4). Pub. L. 111-152, §1409(c)(1)(A), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively. See Codification note above.

Subsec. (c)(4)(A). Pub. L. 111-152, §1409(c)(1)(B), substituted “paragraph (3)” for “paragraph (2)”. See Codification note above.

Subsec. (d)(2), (3). Pub. L. 111-152, §1409(c)(2)(A), (C), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4). See Codification note above.

Subsec. (d)(4). Pub. L. 111-152, §1409(c)(2)(B), substituted “paragraph (3)(C)” for “paragraph (2)(C)” in introductory provisions. See Codification note above.

Pub. L. 111-152, §1409(c)(2)(A), redesignated par. (3) as (4). See Codification note above.

2006—Subsec. (c)(2). Pub. L. 109-280, §1219(a)(3), substituted “paragraph (1) shall not apply. The preceding sentence shall not apply to a substantial valuation overstatement under chapter 1 if—” for “paragraph (1) shall not apply unless—” in introductory provisions. See Codification note above.

Subsec. (c)(3)(B), (C). Pub. L. 109-280, §1219(c)(2), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

“(B) QUALIFIED APPRAISER.—The term ‘qualified appraiser’ means any appraiser meeting the requirements of the regulations prescribed under section 170(a)(1).

“(C) QUALIFIED APPRAISAL.—The term ‘qualified appraisal’ means any appraisal meeting the requirements of the regulations prescribed under section 170(a)(1).”

See Codification note above.

2004—Subsec. (c). Pub. L. 108-357, §812(c)(2)(B), inserted “for underpayments” after “exception” in heading.

Subsec. (c)(1). Pub. L. 108-357, §812(c)(2)(A), substituted “section 6662 or 6663” for “this part”.

Subsec. (d). Pub. L. 108-357, §812(c)(1), added subsec. (d).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title II, §209(d)(1), Dec. 18, 2015, 129 Stat. 3085, provided that: “The amendment made by subsection (a) [amending this section] shall apply to—

“(A) returns filed after the date of the enactment of this Act [Dec. 18, 2015], and

“(B) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 for assessment of the taxes with respect to which such return relates has not expired as of such date.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1409(c)(1) of 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.

Amendment by section 1409(c)(2) of Pub. L. 111-152 applicable to understatements attributable to transactions entered into after Mar. 30, 2010, see section 1409(e)(3) of Pub. L. 111-152, set out as a note under section 6662 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1219(a)(3) of 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.

Amendment by section 1219(c)(2) of Pub. L. 109-280 applicable to appraisals prepared with respect to returns or submissions filed after Aug. 17, 2006, see section 1219(e)(2) of Pub. L. 109-280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years ending after Oct. 22, 2004, with special rule for application of subsec. (d)(3)(B) [now (d)(4)(B)] of this section, see section 812(f) of Pub. L. 108-357, as amended, set out as a note under section 6662 of this title.

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.

PART III—APPLICABLE RULES

Sec. 6665. Applicable rules.

AMENDMENTS

1989—Pub. L. 101-239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2398, added part heading and analysis.