

Internal Revenue Code Section 6664(c)(1)

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.

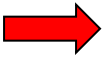
(2) Exception.

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) or to any disallowance of a deduction described in section 6662(b)(10) .

(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 participates 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.