

depending on the circumstances, satisfaction of the minimum requirements may not be dispositive if the taxpayer's participation in the tax shelter lacked significant business purpose, if the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer's investment in the tax shelter, or if the taxpayer agreed with the organizer or promoter of the tax shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter.

(4) *Other factors.* Facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether the corporation acted with reasonable cause and in good faith with respect to a tax shelter item regardless of whether the minimum requirements of paragraph (f)(2) of this section are satisfied.

(g) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(h) *Valuation misstatements of charitable deduction property—(1) In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (h)(2) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (h)(2) of this section) by a qualified appraiser (as defined in paragraph (h)(2) of this section); and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(2) *Definitions.* For purposes of this paragraph (h):

Charitable deduction property means any property (other than money or publicly traded securities, as defined in § 1.170A-13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

Qualified appraisal means a qualified appraisal as defined in § 1.170A-13(c)(3).

Qualified appraiser means a qualified appraiser as defined in § 1.170A-13(c)(5).

(3) *Special rules.* The rules of this paragraph (h) apply regardless of whether § 1.170A-13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (h) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

[T.D. 8381, 56 FR 67508, Dec. 31, 1991; T.D. 8381, 57 FR 6166, Feb. 20, 1992, as amended by T.D. 8617, 60 FR 45666, Sept. 1, 1995; T.D. 8790, 63 FR 66435, Dec. 2, 1998; T.D. 9109, 68 FR 75128, Dec. 30, 2003]

§ 1.6664-4T Reasonable cause and good faith exception to section 6662 penalties.

(a)–(e) [Reserved]

(f) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For purposes of applying the reasonable cause and good faith exception of section 6664(c) to net section 482 adjustments, the rules of § 1.6662-6(d) apply. A taxpayer that does not satisfy the rules of § 1.6662-6(d) for a net section 482 adjustment cannot satisfy the reasonable cause and good faith exception under section 6664(c). The rules of this section apply to underpayments subject to the transactional penalty in § 1.6662-6(b). If the standards of the net section 482 penalty exclusion provisions under § 1.6662-6(d) are met with respect to such underpayments, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of this section.

[T.D. 8656, 61 FR 4885, Feb. 9, 1996]

§ 1.6694-0 Table of contents.

This section lists the captions that appear in §§ 1.6694-1 through 1.6694-4.

§ 1.6694-1 *Section 6694 penalties applicable to tax return preparers.*

(a) Overview.

(1) In general.

(2) Date return is deemed prepared.

(b) Tax return preparer.

(1) In general.

(2) Responsibility of signing tax return preparer.

(3) Responsibility of nonsigning tax return preparer.

(4) Responsibility of signing and nonsigning tax return preparer.

§ 1.6694-1

26 CFR Ch. I (4-1-14 Edition)

(5) Tax return preparer and firm responsibility.

(6) Examples.

(c) Understatement of liability.

(d) Abatement of penalty where taxpayer's liability not understated.

(e) Verification of information furnished by taxpayer or other third party.

(1) In general.

(2) Verification of information on previously filed returns.

(3) Examples.

(f) Income derived (or to be derived) with respect to the return or claim for refund.

(1) In general.

(2) Compensation.

(i) Multiple engagements.

(ii) Reasonable allocation.

(iii) Fee refunds.

(iv) Reduction of compensation.

(3) Individual and firm allocation.

(4) Examples.

(g) Effective/applicability date.

§ 1.6694-2 Penalty for understatement due to an unreasonable position.

(a) In general.

(1) Proscribed conduct.

(2) Special rule for corporations, partnerships, and other firms.

(b) Reasonable to believe that the position would more likely than not be sustained on its merits.

(1) In general.

(2) Authorities.

(3) Written determinations.

(4) Taxpayer's jurisdiction.

(5) When "more likely than not" standard must be satisfied.

(c) Substantial authority.

(d) Exception for adequate disclosure of positions with a reasonable basis.

(1) In general.

(2) Reasonable basis.

(3) Adequate disclosure.

(i) Signing tax return preparers.

(ii) Nonsigning tax return preparers.

(A) Advice to taxpayers.

(B) Advice to another tax return preparer.

(iii) Requirements for advice.

(iv) Pass-through entities.

(v) Examples.

(e) Exception for reasonable cause and good faith.

(1) Nature of the error causing the understatement.

(2) Frequency of errors.

(3) Materiality of errors.

(4) Tax return preparer's normal office practice.

(5) Reliance on advice of others.

(6) Reliance on generally accepted administrative or industry practice.

(f) Effective/applicability date.

§ 1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) In general.

(1) Proscribed conduct.

(2) Special rule for corporations, partnerships, and other firms.

(b) Willful attempt to understate liability.

(c) Reckless or intentional disregard.

(d) Examples.

(e) Rules or regulations.

(f) Section 6694(b) penalty reduced by section 6694(a) penalty.

(g) Effective/applicability date.

§ 1.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) In general.

(b) Tax return preparer must bring suit in district court to determine liability for penalty.

(c) Suspension of running of period of limitations on collection.

(d) Effective/applicability date.

[T.D. 9436, 73 FR 78439, Dec. 22, 2008]

§ 1.6694-1 Section 6694 penalties applicable to tax return preparers.

(a) *Overview*—(1) *In general.* Sections 6694(a) and (b) impose penalties on tax return preparers for conduct giving rise to certain understatements of liability on a return (including an amended or adjusted return) or claim for refund. For positions other than those with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed in an amount equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of tax liability that is due to an undisclosed position for which the tax return preparer did not have substantial authority or due to a disclosed position for which there is no reasonable basis. For positions with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) or reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed in an amount equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of tax liability for which it is not reasonable to believe that the position would more likely than not be sustained on its merits. The section 6694(b) penalty is imposed in an amount equal to the