

**§ 25.2512-3**

or any technical experts as of or near the date of the gift.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7327, 39 FR 35355, Oct. 1, 1974; T.D. 7432, 41 FR 38769, Sept. 13, 1976]

**§ 25.2512-3 Valuation of interest in businesses.**

(a) Care should be taken to arrive at an accurate valuation of any interest in a business which the donor transfers without an adequate and full consideration in money or money's worth. The fair market value of any interest in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. The net value is determined on the basis of all relevant factors including—

(1) A fair appraisal as of the date of the gift of all the assets of the business, tangible and intangible, including good will;

(2) The demonstrated earning capacity of the business; and

(3) The other factors set forth in paragraph (f) of § 25.2512-2 relating to the valuation of corporate stock, to the extent applicable.

Special attention should be given to determining an adequate value of the good will of the business. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of examinations of the business made by accountants, engineers, or any technical experts as of or near the date of the gift.

(b) [Reserved]

**§ 25.2512-4 Valuation of notes.**

The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount (because of the interest rate, or date of maturity, or other cause), or that the

**26 CFR Ch. I (4-1-08 Edition)**

note is uncollectible in part (by reason of the insolvency of the party or parties liable, or for other cause), and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

**§ 25.2512-5 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.**

(a) *In general.* Except as otherwise provided in paragraph (b) of this section and § 25.7520-3(b), the fair market value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift is the present value of the interests determined under paragraph (d) of this section. Section 20.2031-7 of this chapter (Estate Tax Regulations) and related sections provide tables with standard actuarial factors and examples that illustrate how to use the tables to compute the present value of ordinary annuity, life, and remainder interests in property. These sections also refer to standard and special actuarial factors that may be necessary to compute the present value of similar interests in more unusual fact situations. These factors and examples are also generally applicable for gift tax purposes in computing the values of taxable gifts.

(b) *Commercial annuities and insurance contracts.* The value of life insurance contracts and contracts for the payment of annuities issued by companies regularly engaged in their sale is determined under § 25.2512-6.

(c) *Actuarial valuations.* The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift after April 30, 1999, is determined under paragraph (d) of this section. The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift before May 1, 1999, is determined under the following sections:

|                | Transfers |          | Applicable regulations |
|----------------|-----------|----------|------------------------|
|                | After     | Before   |                        |
|                |           | 01-01-52 | 25.2512-5A(a)          |
|                |           | 01-01-71 | 25.2512-5A(b)          |
| 12-31-51 ..... |           | 12-01-83 | 25.2512-5A(c)          |
| 12-31-70 ..... |           | 05-01-89 | 25.2512-5A(d)          |
| 11-30-83 ..... |           |          |                        |

(2) if—

(A) such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee, and

(B)(i) the petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) the date for making the addition to the tax occurs on or after the day on which the petition was filed.

**(b) Exception for collected taxes**

Subsection (a) shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(Added Pub. L. 96-589, §6(e)(1), Dec. 24, 1980, 94 Stat. 3408.)

**PRIOR PROVISIONS**

A prior section 6658, act Aug. 16, 1954, ch. 736, 68A Stat. 826, authorized inclusion as part of the tax a 25 percent penalty in cases of violations or attempted violations of section 6851 of this title, prior to repeal by Pub. L. 96-167, §6(a), Dec. 29, 1979, 93 Stat. 1276.

**EFFECTIVE DATE**

Section effective Oct. 1, 1979, but not applicable to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

**[[§ 6659 to 6661. Repealed. Pub. L. 101-239, title VII, § 7721(c)(2), Dec. 19, 1989, 103 Stat. 2399]]**

Section 6659, added Pub. L. 97-34, title VII, §722(a)(1), Aug. 13, 1981, 95 Stat. 341; amended Pub. L. 97-448, title I, §107(a)(1), (2), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-369, div. A, title I, §155(c)(1), title VII, §721(x)(4), July 18, 1984, 98 Stat. 693, 971, related to additions to tax in case of valuation overstatements for purposes of the income tax.

A prior section 6659 was renumbered section 6662 of this title.

Section 6659A, added Pub. L. 99-514, title XI, §1138(a), Oct. 22, 1986, 100 Stat. 2486, related to additions to tax in case of overstatements of pension liabilities.

Section 6660, added Pub. L. 98-369, div. A, title I, §155(c)(2)(A), July 18, 1984, 98 Stat. 694; amended Pub. L. 99-514, title XVIII, §§1811(d), 1899A(57), Oct. 22, 1986, 100 Stat. 2833, 2961, related to additions to tax in case of valuation understatements for purposes of estate or gift taxes.

A prior section 6660 was renumbered section 6662 of this title.

Section 6661, added Pub. L. 97-248, title III, §323(a), Sept. 3, 1982, 96 Stat. 613; amended Pub. L. 97-354, §5(a)(42), Oct. 19, 1982, 96 Stat. 1697; Pub. L. 98-369, div. A, title VII, §714(h)(3), July 18, 1984, 98 Stat. 962; Pub. L. 99-509, title VIII, §8002(a), (c), Oct. 21, 1986, 100 Stat. 1951; Pub. L. 99-514, title XV, §1504(a), Oct. 22, 1986, 100 Stat. 2743, related to substantial understatements of liability.

**EFFECTIVE DATE OF REPEAL**

Repeal 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 II—ACCURACY-RELATED AND FRAUD PENALTIES**

Sec. 6662. Imposition of accuracy-related penalty on underpayments.

Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.  
 6663. Imposition of fraud penalty.  
 6664. Definitions and special rules.

**AMENDMENTS**

2004—Pub. L. 108-357, title VIII, §812(e)(2), Oct. 22, 2004, 118 Stat. 1580, added items 6662 and 6662A and struck out former item 6662 “Imposition of accuracy-related penalty”.

1989—Pub. L. 101-239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2395, added part heading and analysis of sections.

**§ 6662. Imposition of accuracy-related penalty on underpayments**

**(a) Imposition of penalty**

If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

**(b) Portion of underpayment to which section applies**

This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

- (1) Negligence or disregard of rules or regulations.
- (2) Any substantial understatement of income tax.
- (3) Any substantial valuation misstatement under chapter 1.
- (4) Any substantial overstatement of pension liabilities.
- (5) Any substantial estate or gift tax valuation understatement.
- (6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.
- (7) Any undisclosed foreign financial asset understatement.

This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 6663. Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A.

**(c) Negligence**

For purposes of this section, the term “negligence” includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term “disregard” includes any careless, reckless, or intentional disregard.

**(d) Substantial understatement of income tax**

**(1) Substantial understatement**

**(A) In general**

For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of—

- (i) 10 percent of the tax required to be shown on the return for the taxable year, or

(ii) \$5,000.

**(B) Special rule for corporations**

In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

- (i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000), or
- (ii) \$10,000,000.

**(2) Understatement**

**(A) In general**

For purposes of paragraph (1), the term “understatement” means the excess of—

- (i) the amount of the tax required to be shown on the return for the taxable year, over
- (ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.

**(B) Reduction for understatement due to position of taxpayer or disclosed item**

The amount of the understatement under subparagraph (A) shall be reduced by that portion of the understatement which is attributable to—

- (i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or
- (ii) any item if—
  - (I) the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and
  - (II) there is a reasonable basis for the tax treatment of such item by the taxpayer.

For purposes of clause (ii)(II), in no event shall a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation.

**(C) Reduction not to apply to tax shelters**

**(i) In general**

Subparagraph (B) shall not apply to any item attributable to a tax shelter.

**(ii) Tax shelter**

For purposes of clause (i), the term “tax shelter” means—

- (I) a partnership or other entity,
- (II) any investment plan or arrangement, or
- (III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

**(3) Secretarial list**

The Secretary may prescribe a list of positions which the Secretary believes do not meet 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(2),<sup>1</sup> and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.

**(e) Substantial valuation misstatement under chapter 1**

**(1) In general**

For purposes of this section, there is a substantial valuation misstatement under chapter 1 if—

(A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

(B)(i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

(ii) the net section 482 transfer price adjustment for the taxable year exceeds the lesser of \$5,000,000 or 10 percent of the taxpayer's gross receipts.

**(2) Limitation**

No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

**(3) Net section 482 transfer price adjustment**

For purposes of this subsection—

**(A) In general**

The term “net section 482 transfer price adjustment” means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

**(B) Certain adjustments excluded in determining threshold**

For purposes of determining whether the threshold requirements of paragraph (1)(B)(ii) are met, the following shall be excluded:

(i) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if—

(I) it is established that the taxpayer determined such price in accordance

<sup>1</sup> See References in Text note below.

with a specific pricing method set forth in the regulations prescribed under section 482 and that the taxpayer's use of such method was reasonable,

(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such a method and which establishes that the use of such method was reasonable, and

(III) the taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation.

(ii) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to a redetermination of price where such price was not determined in accordance with such a specific pricing method if—

(I) the taxpayer establishes that none of such pricing methods was likely to result in a price that would clearly reflect income, the taxpayer used another pricing method to determine such price, and such other pricing method was likely to result in a price that would clearly reflect income,

(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such other method and which establishes that the requirements of subclause (I) were satisfied, and

(III) the taxpayer provides such documentation to the Secretary within 30 days of request for such documentation.

(iii) Any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

#### (C) Special rule

If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph.

#### (D) Coordination with reasonable cause exception

For purposes of section 6664(c) the taxpayer shall not be treated as having reasonable cause for any portion of an underpayment attributable to a net section 482 transfer price adjustment unless such taxpayer meets the requirements of clause (i), (ii), or (iii) of subparagraph (B) with respect to such portion.

#### (f) Substantial overstatement of pension liabilities

##### (1) In general

For purposes of this section, there is a substantial overstatement of pension liabilities if the actuarial determination of the liabilities taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a) is 200 percent or more of the amount determined to be the correct amount of such liabilities.

##### (2) Limitation

No penalty shall be imposed by reason of subsection (b)(4) unless the portion of the underpayment for the taxable year attributable to substantial overstatements of pension liabilities exceeds \$1,000.

#### (g) Substantial estate or gift tax valuation understatement

##### (1) In general

For purposes of this section, there is a substantial estate or gift tax valuation understatement if the value of any property claimed on any return of tax imposed by subtitle B is 65 percent or less of the amount determined to be the correct amount of such valuation.

##### (2) Limitation

No penalty shall be imposed by reason of subsection (b)(5) unless the portion of the underpayment attributable to substantial estate or gift tax valuation understatements for the taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent) exceeds \$5,000.

#### (h) Increase in penalty in case of gross valuation misstatements

##### (1) In general

To the extent that a portion of the underpayment to which this section applies is attributable to one or more gross valuation misstatements, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

##### (2) Gross valuation misstatements

The term "gross valuation misstatements" means—

(A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting—

(i) in paragraph (1)(A), "200 percent" for "150 percent",

(ii) in paragraph (1)(B)(i)—

(I) "400 percent" for "200 percent", and

(II) "25 percent" for "50 percent", and

(iii) in paragraph (1)(B)(ii)—

(I) "\$20,000,000" for "\$5,000,000", and

(II) "20 percent" for "10 percent".

(B) any substantial overstatement of pension liabilities as determined under subsection (f) by substituting "400 percent" for "200 percent", and

(C) any substantial estate or gift tax valuation understatement as determined under subsection (g) by substituting "40 percent" for "65 percent".

**(j)<sup>2</sup> Undisclosed foreign financial asset understatement****(1) In general**

For purposes of this section, the term “undisclosed foreign financial asset understatement” means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

**(2) Undisclosed foreign financial asset**

For purposes of this subsection, the term “undisclosed foreign financial asset” means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.

**(3) Increase in penalty for undisclosed foreign financial asset understatements**

In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting “40 percent” for “20 percent”.

**(i)<sup>3</sup> Increase in penalty in case of nondisclosed noneconomic substance transactions****(1) In general**

In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting “40 percent” for “20 percent”.

**(2) Nondisclosed noneconomic substance transactions**

For purposes of this subsection, the term “nondisclosed noneconomic substance transaction” means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.

**(3) Special rule for amended returns**

In no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection 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. 101-239, title VII, § 7721(a), Dec. 19, 1989, 103 Stat. 2395; amended Pub. L. 101-508, title XI, § 11312(a), (b), Nov. 5, 1990, 104 Stat. 1388-454, 1388-455; Pub. L. 103-66, title XIII, §§ 13236(a)-(d), 13251(a), Aug. 10, 1993, 107 Stat. 505, 506, 531; Pub. L. 103-465, title VII, § 744(a), (b), Dec. 8, 1994, 108 Stat. 5011; Pub. L. 105-34, title X, § 1028(c), Aug. 5, 1997, 111 Stat. 928; Pub. L.

108-357, title VIII, §§ 812(b), (d), (e)(1), 819(a), (b), Oct. 22, 2004, 118 Stat. 1578, 1580, 1584; Pub. L. 109-135, title IV, §§ 403(x)(1), 412(aaa), Dec. 21, 2005, 119 Stat. 2629, 2641; Pub. L. 109-280, title XII, § 1219(a)(1), (2), Aug. 17, 2006, 120 Stat. 1083; Pub. L. 111-147, title V, § 512(a), Mar. 18, 2010, 124 Stat. 110; Pub. L. 111-152, title I, § 1409(b)(1), (2), Mar. 30, 2010, 124 Stat. 1068, 1069.)

## REFERENCES IN TEXT

Section 6664(d)(2), referred to in subsec. (d)(3), was redesignated as section 6664(d)(3) by Pub. L. 111-152, title I, § 1409(c)(2)(A), Mar. 30, 2010, 124 Stat. 1069.

## CODIFICATION

Section 1409(b)(1), (2) of Pub. L. 111-152, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment notes below.

Section 1219(a)(1), (2) of Pub. L. 109-280, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

## PRIOR PROVISIONS

A prior section 6662, acts Aug. 16, 1954, ch. 736, 68A Stat. 827, § 6659; May 14, 1960, Pub. L. 86-470, § 1, 74 Stat. 132; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(51), 83 Stat. 531; Sept. 2, 1974, Pub. L. 93-406, title II, § 1016(a)(19), 88 Stat. 931; renumbered § 6660, Aug. 13, 1981, Pub. L. 97-34, title VII, § 722(a)(1), 95 Stat. 341; renumbered § 6662, Sept. 3, 1982, Pub. L. 97-248, title III, § 323(a), 96 Stat. 613, directed that additions be treated as tax and set procedure for assessing certain additions to tax, prior to repeal by Pub. L. 101-239, title VII, § 7721(a), Dec. 19, 1989, 103 Stat. 2395, applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989. See section 6665 of this title.

## AMENDMENTS

2010—Subsec. (b)(6). Pub. L. 111-152, § 1409(b)(1), added par. (6). See Codification note above.

Subsec. (b)(7). Pub. L. 111-147, § 512(a)(1), which directed amendment of subsec. (b) by adding par. (7) after par. (6), was executed by adding par. (7) after par. (5) to reflect the probable intent of Congress and the subsequent addition of par. (6) by Pub. L. 111-152. See above.

Subsec. (i). Pub. L. 111-152, § 1409(b)(2), added subsec. (i). See Codification note above.

Subsec. (j). Pub. L. 111-147, § 512(a)(2), added subsec. (j).

2006—Subsec. (e)(1)(A). Pub. L. 109-280, § 1219(a)(1)(A), substituted “150 percent” for “200 percent”. See Codification note above.

Subsec. (g)(1). Pub. L. 109-280, § 1219(a)(1)(B), substituted “65 percent” for “50 percent”. See Codification note above.

Subsec. (h)(2)(A)(i), (ii). Pub. L. 109-280, § 1219(a)(2)(A), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

“(i) ‘400 percent’ for ‘200 percent’ each place it appears,

“(ii) ‘25 percent’ for ‘50 percent’, and”.

See Codification note above.

Subsec. (h)(2)(C). Pub. L. 109-280, § 1219(a)(2)(B), substituted “‘40 percent’ for ‘65 percent’” for “‘25 percent’ for ‘50 percent’”. See Codification note above.

2005—Subsec. (b). Pub. L. 109-135, § 403(x)(1), inserted at end “Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A.”

<sup>2</sup>So in original. Subsec. (i) is set out after subsec. (j).

<sup>3</sup>So in original. Subsec. (j) is set out before subsec. (i).

Subsec. (d)(3). Pub. L. 109-135, § 412(aaa), struck out “the” before “1 or more”.

2004—Pub. L. 108-357, § 812(e)(1), inserted “on underpayments” after “penalty” in section catchline.

Subsec. (d)(1)(B). Pub. L. 108-357, § 819(a), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: “In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), paragraph (1) shall be applied by substituting ‘\$10,000’ for ‘\$5,000.’”

Subsec. (d)(2)(A). Pub. L. 108-357, § 812(b), inserted concluding provisions.

Subsec. (d)(2)(C). Pub. L. 108-357, § 812(d), amended subpar. (C) generally, substituting provisions relating to inapplicability of subpar. (B) to any item attributable to a tax shelter and defining the term “tax shelter” for provisions relating to, in the case of any item of a taxpayer other than a corporation which is attributable to a tax shelter, inapplicability of subpar. (B)(ii) and “inapplicability of subpar. (B)(i), unless the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment, inapplicability of subpar. (B) to any item of a corporation which is attributable to a tax shelter, and provisions defining the term “tax shelter”.

Subsec. (d)(2)(D). Pub. L. 108-357, § 819(b)(2), struck out heading and text of subpar. (D). Text read as follows: “The Secretary shall prescribe (and revise not less frequently than annually) a list of positions—

“(i) for which the Secretary believes there is not substantial authority, and

“(ii) which affect a significant number of taxpayers.

Such list (and any revision thereof) shall be published in the Federal Register.”

Subsec. (d)(3). Pub. L. 108-357, § 819(b)(1), added par. (3).

1997—Subsec. (d)(2)(B). Pub. L. 105-34, § 1028(c)(1), inserted concluding provisions.

Subsec. (d)(2)(C)(iii). Pub. L. 105-34, § 1028(c)(2), substituted “a significant purpose” for “the principal purpose” in concluding provisions.

1994—Subsec. (d)(2)(C)(i). Pub. L. 103-465, § 744(b)(1), substituted “In the case of any item of a taxpayer other than a corporation which is” for “In the case of any item” in introductory provisions.

Subsec. (d)(2)(C)(ii). Pub. L. 103-465, § 744(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (d)(2)(C)(iii). Pub. L. 103-465, § 744(a), (b)(2), redesignated cl. (ii) as (iii) and substituted “this subparagraph” for “clause (i)” in introductory provisions.

1993—Subsec. (d)(2)(B)(ii). Pub. L. 103-66, § 13251(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “any item with respect to which the relevant facts affecting the item’s tax treatment are adequately disclosed in the return or in a statement attached to the return.”

Subsec. (e)(1)(B)(ii). Pub. L. 103-66, § 13236(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “the net section 482 transfer price adjustment for the taxable year exceeds \$10,000,000.”

Subsec. (e)(3)(B). Pub. L. 103-66, § 13236(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “For purposes of determining whether the \$10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded—

“(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer’s determination of such price and that the taxpayer acted in good faith with respect to such price, and

“(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively con-

nected with the conduct of a trade or business within the United States.”

Subsec. (e)(3)(D). Pub. L. 103-66, § 13236(c), added subpar. (D).

Subsec. (h)(2)(A)(iii). Pub. L. 103-66, § 13236(d), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “‘\$20,000,000’ for ‘\$10,000,000.’”

1990—Subsec. (b)(3). Pub. L. 101-508, § 11312(b)(1), amended par. (3) generally, substituting “misstatement” for “overstatement”.

Subsec. (e). Pub. L. 101-508, § 11312(a), substituted “misstatement” for “overstatement” in heading and amended text generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—For purposes of this section, there is a substantial valuation overstatement under chapter 1 if the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

“(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation overstatements under chapter 1 exceeds \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).”

Subsec. (h)(2)(A). Pub. L. 101-508, § 11312(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “any substantial valuation overstatement under chapter 1 as determined under subsection (e) by substituting ‘400 percent’ for ‘200 percent’.”

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-152, title I, § 1409(e), Mar. 30, 2010, 124 Stat. 1070, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6662A, 6664, 6676, and 7701 of this title] shall apply to transactions entered into after the date of the enactment of this Act [Mar. 30, 2010].

“(2) UNDERPAYMENTS.—The amendments made by subsections (b) and (c)(1) [amending this section and sections 6662A and 6664 of this title] shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

“(3) UNDERSTATEMENTS.—The amendments made by subsection (c)(2) [amending section 6664 of this title] shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

“(4) REFUNDS AND CREDITS.—The amendment made by subsection (d) [amending section 6676 of this title] shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act.”

Pub. L. 111-147, title V, § 512(b), Mar. 18, 2010, 124 Stat. 111, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 18, 2010].”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(x)(1) of 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 OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, § 812(f), Oct. 22, 2004, 118 Stat. 1580, as amended by Pub. L. 109-135, title IV, § 403(x)(3), Dec. 21, 2005, 119 Stat. 2629, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 6662A of this title and amending this section and section 6664 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

“(2) DISQUALIFIED OPINIONS.—Section 6664(d)(3)(B) of the Internal Revenue Code of 1986 [now section 6664(d)(4)(B)] (as added by subsection (c)) shall not apply to the opinion of a tax advisor if—

“(A) the opinion was provided to the taxpayer before the date of the enactment of this Act,

“(B) the opinion relates to one or more transactions all of which were entered into before such date, and

“(C) the tax treatment of items relating to each such transaction was included on a return or statement filed by the taxpayer before such date.”

Pub. L. 108-357, title VIII, §819(c), Oct. 22, 2004, 118 Stat. 1585, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to items with respect to transactions entered into after Aug. 5, 1997, see section 1028(e)(2) of Pub. L. 105-34, set out as a note under section 6111 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 744(c) of Pub. L. 103-465 provided that: “The amendments made by this section [amending this section] shall apply to items related to transactions occurring after the date of the enactment of this Act [Dec. 8, 1994].”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 13236(e) of Pub. L. 103-66 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993.”

Section 13251(b) of Pub. L. 103-66 provided that: “The amendment made by this section [amending this section] shall apply to returns the due dates for which (determined without regard to extensions) are after December 31, 1993.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 11312(c) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 5, 1990].”

#### EFFECTIVE DATE

Part 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.

### § 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions

#### (a) Imposition of penalty

If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

#### (b) Reportable transaction understatement

For purposes of this section—

##### (1) In general

The term “reportable transaction understatement” means the sum of—

(A) the product of—

(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

#### (2) Items to which section applies

This section shall apply to any item which is attributable to—

(A) any listed transaction, and

(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

#### (c) Higher penalty for nondisclosed listed and other avoidance transactions

Subsection (a) shall be applied by substituting “30 percent” for “20 percent” with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A)<sup>1</sup> is not met.

#### (d) Definitions of reportable and listed transactions

For purposes of this section, the terms “reportable transaction” and “listed transaction” have the respective meanings given to such terms by section 6707A(c).

#### (e) Special rules

##### (1) Coordination with penalties, etc., on other understatements

In the case of an understatement (as defined in section 6662(d)(2))—

(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

<sup>1</sup> See References in Text note below.