

26 USC 6664: Definitions and special rules Text contains those laws in effect on September 25, 2026

From Title 26-INTERNAL REVENUE CODES Subtitle F-Procedure and Administration CHAPTER 68-

ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES Subchapter A-

Additions to the Tax and Additional Amounts PART II-ACCURACY-RELATED AND FRAUD PENALTIES

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§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) 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.

(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 ; Pub. L. 117–328, div. T, title VI, §605(a)(2)(C), Dec. 29, 2022, 136 Stat. 5394 .)

Editorial Notes

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

2022-Subsec. (c)(2). Pub. L. 117–328 inserted "or to any disallowance of a deduction described in section 6662(b)(10)" before period at end.

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).

Statutory Notes and Related Subsidiaries

Effective Date of 2022 Amendment

Amendment by Pub. L. 117–328 applicable to contributions made after Dec. 29, 2022, see section 605(c)(1) of Pub. L. 117–328, set out as a note under section 170 of this title.

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.

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