

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability
(Also: Part I, §§ 6662, 6664; 1.6662-3, 1.6662-4, 1.6664-2.)

Rev. Proc. 2022-39

SECTION 1. PURPOSE

The purpose of this revenue procedure is to obsolete Rev. Proc. 94-69, 1994-2 C.B. 804, and prescribe special procedures for eligible taxpayers to file a qualified amended return in accordance with § 1.6664-2(c)(4)(ii) of the Income Tax Regulations. This revenue procedure also sets forth special procedures for eligible taxpayers to show additional tax due or make adequate disclosure with respect to an item or a position on a previously filed return to avoid imposition of the accuracy-related penalties described in §§ 6662(b)(1) and 6662(b)(2) of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

.01 Section 6662(b)(1) and (2) impose an accuracy-related penalty equal to 20 percent of the portion of any underpayment that is attributable to (1) negligence or disregard of rules or regulations or (2) any substantial understatement of income tax.

.02 Section 1.6662-3(c) provides, generally, that no penalty for disregard of rules or regulations will be imposed on any underpayment attributable to an item or position that is adequately disclosed, has a reasonable basis and, for penalties attributable to disregard of a regulation, represents a good faith challenge to the validity of the regulation.

.03 Section 6662(d)(1) generally defines “substantial understatement” of income tax to be an understatement for the taxable year that exceeds the greater of 10 percent of the tax required to be shown on the return or \$5,000 (or, in the case of a corporation other than an S corporation or a personal holding company, exceeds the lesser of (1) 10 percent of the tax required to be shown on the return (or, if greater, \$10,000) or (2) \$10 million).

.04 In the case of a taxpayer who claims any deduction allowed under § 199A of the Code for the taxable year, an understatement is substantial if it exceeds the greater of 5 percent of the tax required to be shown on the return or \$5,000.

.05 Under §§ 6662(d)(2)(B)(ii) and 1.6662-4(e), the tax treatment of an item (other than a tax shelter item or an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation) for which the taxpayer had a reasonable basis, that is properly substantiated and adequately

disclosed, and for which the taxpayer kept adequate books and records is not taken into account in computing the amount of an understatement of income tax for purposes of the substantial understatement penalty.

.06 Section 1.6662-7 provides that the accuracy-related penalty for disregarding rules or regulations or for a substantial understatement of income tax may be avoided by disclosure of a return position only if the position has at least a reasonable basis.

.07 Sections 1.6662-3(c) and 1.6662-4(f) provide the methods for making adequate disclosures for purposes of (1) the penalty for disregard of rules or regulations, and (2) the substantial understatement penalty, respectively. These methods include attaching a properly completed Form 8275, *Disclosure Statement*, to an original return or to a qualified amended return in the case of an item or position other than one that is contrary to a regulation. In the case of a position contrary to a regulation, disclosure must be made on Form 8275-R, *Regulation Disclosure Statement*.

.08 Section 1.6664-2(c)(3) generally provides, among other deadlines, that for purposes of the accuracy-related penalty, a “qualified amended return” is an amended return, or request for an administrative adjustment under § 6227, that is filed after the due date of the return for the taxable year (including extensions) and before the earliest of (1) the date on which the Internal Revenue Service (IRS) first contacts the taxpayer concerning an examination of the return or (2) for certain pass-through items, the date on which the IRS first contacts the pass-through entity in connection with an examination of the return to which the pass-through item relates. In addition, § 1.6664-2(c)(4)(ii) provides that the Commissioner may prescribe by revenue procedure the manner in which the rules governing qualified amended returns apply to particular

classes of taxpayers.

.09 Qualified amended returns are intended to encourage voluntary compliance by permitting taxpayers to avoid accuracy-related penalties by filing an amended return before the IRS begins an examination of the taxpayer or the promoter of a transaction in which the taxpayer participated. See T.D. 9186, 2005-13 I.R.B. 790 (March 2, 2005) (providing additional circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return).

.10 To discourage taxpayers from forgoing or delaying the filing of amended returns unless or until the IRS has taken steps to identify taxpayers who filed returns with underpayments, § 1.6664-2(c)(3) sets out events that operate as deadlines after which a taxpayer may not avoid accuracy-related penalties by filing an amended return. See T.D. 9186.

.11 Revenue Procedure 94-69 set forth special procedures for taxpayers that were subject to audit each year under the now-discontinued Coordinated Examination Program (CEP). After elimination of the CEP in 2000, Rev. Proc. 94-69 was applied to taxpayers subject to audit under the Coordinated Industry Case Program (CIC). Taxpayers in the CEP and CIC programs were unique in that, unlike most taxpayers, they were generally subject to a continuous examination covering each year's return; and as such, amendments to filed returns were best addressed as the examination of a particular year started through a disclosure to the examination team in lieu of filing a regular qualified amended return.

.12 The special procedures set forth in Rev. Proc. 94-69 allowed taxpayers subject to the CEP and CIC to show additional tax due or to make adequate disclosures with

respect to an item or a position and thereby avoid the imposition of accuracy-related penalties under §§ 6662(b)(1) and 6662(b)(2) of the Code. In general, the special procedures allowed these taxpayers to avoid or reduce the accuracy-related penalties to the extent that items resulting in additional tax were reported, or a position contrary to a rule was adequately disclosed, in a written statement furnished to the IRS within a 15-day window beginning with the IRS's written request for such statement.

.13 In 2019, the IRS replaced the CIC Program with the Large Corporate Compliance Program (LCC) effective for audits for taxable years 2017 and later. See IRS News Release: IR-2019-95 (May 16, 2019), *LB&I Announces Large Corporate Compliance Program*. Under the LCC, large corporate taxpayers are selected for examination based on their risk profiles and data analytics. Large corporate taxpayers are no longer subject to planned continuous examinations.

.14 The IRS also implemented the Large Partnership Compliance Program (LPC) to address the IRS's compliance approach to large partnerships. See Interim Guidance Memo: LB&I-04-1021-0017 (October 21, 2021), *Interim Guidance on Implementation of the Large Partnership Compliance Pilot Program*.

.15 On May 21, 2019, the IRS announced that, as a transition, Rev. Proc. 94-69 would continue to apply to any taxpayer that was both in the CIC (with an open CIC examination as of May 2019 for taxable year 2016 and earlier taxable years) and the LCC (for taxable year 2017 and later taxable years). See Interim Guidance Memo: LB&I-04-0419-004 (May 21, 2019), *Interim Guidance on Implementation of the Large Corporate Compliance (LCC) Program*.

.16 On August 19, 2020, the IRS requested comments concerning obsoleting Rev.

Proc. 94-69. See IRS Statements and Announcements, *IRS Seeks Comments on Revenue Procedure 94-69* (Aug. 19, 2020), at <https://www.irs.gov/newsroom/irs-seeks-comments-on-revenue-procedure-94-69>. The comments received contended that both large corporate taxpayers and the IRS have benefited from using Rev. Proc. 94-69 to allow those taxpayers to disclose errors on their returns at the start of an audit. The IRS has determined that for a subset of large corporate taxpayers and large partnerships whose tax posture is likely to result in near-annual examinations, special procedures are appropriate for disclosure of errors on a return or items that may result in an underpayment but have a reasonable basis.

.17 The procedures set forth in this revenue procedure allow eligible taxpayers to avoid the accuracy-related penalty described in §§ 6662(b)(1) and 6662(b)(2) to the extent that the taxpayer reports errors resulting in additional tax or adequately discloses the tax treatment of an item that has a reasonable basis as provided in section 4 of this revenue procedure.

.18 The special procedures set forth in this revenue procedure are intended for the disclosure of errors and omissions that were not known at the time of filing a return.

SECTION 3. SCOPE

.01 *Eligible taxpayers.* The special procedures set forth in this revenue procedure are available to eligible taxpayers. An “eligible taxpayer” means any taxpayer selected for examination under the LCC (or successor program) if, on the date on which the IRS first contacts the taxpayer concerning an examination of an income tax return, at least four of the taxpayer’s income tax returns for the five taxable years preceding the taxable year at issue are (or were) under examination under the LCC, the CIC, or a successor

program. An eligible taxpayer also means any partnership selected for examination under the LPC (or successor program) if, on the date on which the IRS first contacts the partnership concerning an examination of a return of partnership income, at least four of the partnership's returns for the five taxable years preceding the taxable year at issue are (or were) under examination under the LPC (or successor program). Taxpayers selected for examination under the LCC or the LPC will be notified by the IRS if they are eligible taxpayers under this revenue procedure.

.02 *Procedures for ineligible taxpayers.* Taxpayers not eligible for, or making disclosures beyond the scope of, the special procedures set forth in this revenue procedure have the opportunity to utilize existing methods to avoid the imposition of penalties, including by filing a qualified amended return as described in and satisfying the requirements of § 1.6664-2(c)(3), or by adequately disclosing the position on a properly completed Form 8275, Form 8275-R, or Schedule UTP, *Uncertain Tax Position Statement*, filed with a return and satisfying the requirements of § 1.6662-3(c).

SECTION 4. QUALIFIED AMENDED RETURN ON FORM 15307

.01 For purposes of avoiding the imposition of the penalty under § 6662(b)(1) for negligence or disregard of rules or regulations, and the substantial understatement penalty under § 6662(b)(2), a properly completed Form 15307, *Post-Filing Disclosure for Specified Large Business Taxpayers* (or successor form), is treated as a qualified amended return with respect to a particular taxable year of an eligible taxpayer if an eligible taxpayer furnished it to the IRS personnel conducting the examination after the tax return with respect to the particular taxable year has been filed but no later than 30 days (or a later date agreed to in writing by the IRS with respect to a particular taxable

year) from the date of a written request to the taxpayer that Form 15307 be furnished with respect to that taxable year.

.02 The taxpayer must include a description of all items that would result in one or more adjustments with respect to a particular taxable year if the taxpayer filed a properly completed amended return with respect to that taxable year, or request for an administrative adjustment under § 6227. The description of an item is adequate if it consists of information that reasonably may be expected to apprise the IRS of the identity of the item, its amount, and the nature of the controversy or potential controversy. Each disclosed adjustment with respect to the particular taxable year must be stated separately.

.03 The taxpayer need not include a recomputation of total tax liability with respect to the particular taxable year with Form 15307. Similarly, if an item automatically affects another item with respect to that taxable year, the Form 15307 need not include a recomputation of the affected item. The taxpayer is required to include a computation of the increase (or decrease) in taxable income, or the increase (or decrease) to tax credits if the disclosure relates to tax credits, with respect to each item disclosed on the Form 15307.

.04 The taxpayer may also disclose information for purposes of establishing the reasonable basis of a position even though the taxpayer does not report any items that would result in adjustments with respect to the particular taxable year.

.05 Any additional tax liability with respect to the particular taxable year resulting from the adjustments identified in a written statement described in sections 4.01 through 4.03 of this revenue procedure that is agreed at the conclusion of the examination will

be treated as an additional amount of tax shown on a qualified amended return for purposes of determining whether there is an underpayment of tax with respect to that taxable year subject to penalty under §§ 6662(b)(1) and 6662(b)(2). Any additional tax liability resulting from adjustments identified in the written statement with respect to a particular taxable year that is unagreed at the conclusion of the examination (1) will be subject to the deficiency procedures prescribed by §§ 6212 and 6213, or the partnership audit procedures prescribed by §§ 6221 through 6241, as applicable; (2) will not reduce the underpayment subject to penalty under § 6662(b)(1) for negligence; and (3) will not reduce the penalty for substantial understatement of income tax unless there was a reasonable basis for the taxpayer's tax treatment of the item identified in the written statement.

.06 Failure to Provide Adequate Disclosure.

(1) A disclosure based on incomplete information, unreasonable assumptions, or otherwise not in conformity with the requirements of this revenue procedure and the Form 15307 furnished to the IRS with respect to a particular taxable year will be considered an inadequate disclosure.

(2) A taxpayer deemed to have made an inadequate disclosure will not receive penalty protection under this process with respect to the item or items inadequately disclosed with respect to the particular taxable year. The IRS will inform the taxpayer of any determination that a disclosure is inadequate.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 94-69 is obsolete. "Rev. Proc. 2022-39" should be substituted for "Rev. Proc. 94-69" in any other revenue procedure that refers to Rev. Proc. 94-69.

SECTION 6. EFFECTIVE DATE

.01 This revenue procedure is effective for examinations of eligible taxpayers that begin after November 16, 2022, the date this revenue procedure was released to the public.

.02 The transition relief described in section 2.15 of this revenue procedure continues to apply to the taxpayers eligible for such relief with respect to examinations of taxable year 2020 and earlier years. The transition relief described in section 2.15 of this revenue procedure does not apply with respect to the examination of taxable year 2021 and later years. For examinations of taxable year 2021 and later years, taxpayers who were eligible for the transition relief described in section 2.15 of this revenue procedure can only utilize the special procedures set forth in this revenue procedure if the taxpayer meets the eligibility requirements described in section 3 of this revenue procedure.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Jessica Chase of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact Ms. Chase at (202) 317-6845 (not a toll-free call).