

Instructions for Form 8275

(April 1985)

Disclosure Statement Under Section 6661

(Section references are to the Internal Revenue Code, unless otherwise noted.)

General Instructions

Paperwork Reduction Act Notice

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information to avoid the penalty under section 6661.

Purpose of Form

Form 8275 may be filed to avoid the penalty imposed by section 6661 by disclosing items which could cause a substantial understatement of income tax. (The term "understatement" is defined in the **Substantial Understatement** section.) You may use your own form as long as it provides the same information as Form 8275.

Who Should File

Form 8275 is filed by individual taxpayers (Form 1040), C corporations, and pass-through entities. Pass-through entities are a partnership, an S corporation (as defined in section 1361(a)(1)), an estate, a trust, a regulated investment company (as defined in section 851(a)), or a real estate investment trust (as defined in section 856(a)).

In the case of items attributable to a pass-through entity, disclosure regarding the tax treatment of such items should be made on the tax return of the entity or on an attachment to the tax return. A taxpayer also may make adequate disclosure with respect to the items from the pass-through entity. However, the pass-through entity is the only one that can make adequate disclosure if the pass-through items are items which could have been disclosed by the entity pursuant to certain revenue procedures. (See the note under **Exceptions** for more information on the revenue procedures.)

When To File

File Form 8275 when:

- You have items which could cause a substantial understatement of income tax and your original tax return (not your amended return) is due after December 31, 1982 (not including extensions); **and**
- You do not meet the exceptions described below; **and either**

- You **wish to reduce** the substantial understatement on which the penalty under section 6661 may be imposed, provided the substantial understatement is not from tax shelter items; **or**
- You **wish to have the penalty** under section 6661 **waived** because you are making adequate disclosure on your qualified amended return. (See regulation section 1.6661-6(c)(2) for the definition of a qualified amended return).

Exceptions

Do not file Form 8275:

- For certain items that meet the requirements of Revenue Procedure 85-19, 1985-14, IRB 16 (regarding adequate disclosure by filing certain other IRS forms or IRS schedules). **Note:** *The subject matter in this revenue procedure is updated annually. Guidance for returns filed in 1983 and 1984 was provided by Rev. Proc. 83-21, 1983-1 C.B. 680, and Rev. Proc. 84-19, 1984-1 C.B. 433.*
- For a tax year for which a return is due before January 1, 1983, even if there are items carried back from a tax year for which a return is due after December 31, 1982 (not including extensions).

Carrybacks, Carryovers, and Recurring Items

If you have **carryover** items which you disclosed on a tax return which was due after December 31, 1982 (not including extensions), you do not have to file another Form 8275 for those items in subsequent tax years.

If you **carryback** items which you disclosed on a tax return which was due after December 31, 1982 (not including extensions), you do not have to file another Form 8275 for those items in prior tax years.

File Form 8275 for each tax year in which a tax return is due after December 31, 1982 (not including extensions), if you have items you are disclosing that are of a **recurring nature** (such as depreciation expense).

Where To File

File all Forms 8275 with your original or qualified amended tax return. Keep a copy for your records.

If you are making adequate disclosure for items received from a pass-through entity, send a second copy to the Internal Revenue Service Center where the pass-through entity return was filed with a notation to the effect that the statement is to be associated with the return of the entity. If you have items from more than one pass-through entity, you must complete and file a separate Form 8275 for items received from each different pass-through entity.

Substantial Understatement

Generally, if there is a substantial understatement of income tax for any tax year, you may be subject to a penalty of 10% of the amount of the substantial understatement of income tax.

There is a substantial understatement of income tax if the amount of the understatement for any tax year exceeds the greater of:

- 10% of the tax required to be shown on the return (see regulation section 1.6661-2(d)(4)) for the tax year; **or**
- \$5,000 (\$10,000 for corporations other than an S corporation as defined in section 1361(a)(1) or a personal holding company as defined in section 542).

An **understatement** is the excess of:

- The amount of tax required to be shown on the return for the taxable year; **over**
- The amount of tax shown on the return for the taxable year, reduced by any rebates. See regulation section 1.6661-2(d)(3) for the definition of a rebate.

However, the amount of any understatement subject to the section 6661 penalty will be reduced by the part which is attributable to:

- An item (other than tax shelter items), for which there was substantial authority (see regulation section 1.6661-3) for the treatment claimed at the time the return was filed or on the last day of the taxable year to which the return relates.

- An item (other than tax shelter items) that is adequately disclosed (see regulation section 1.6661-4) on the tax return or in a statement attached to the return.
- A tax shelter item (see regulation section 1.6661-5), if there was substantial authority for the treatment claimed at the time the return was filed or on the last day of the taxable year to which the return relates and you held the reasonable belief that the tax treatment of the item was more likely than not the proper tax treatment. **Note:** *Disclosure of the tax shelter item will not reduce an understatement. Substantial authority and reasonable belief, as defined in regulation sections 1.6661-3 and 1.6661-5(d), must be present to reduce the understatement.*
- Items taken into account in computing the amount of a net operating loss, unused tax credit, or net capital loss do not need substantial authority or adequate disclosure if these items were from a taxable year in which the return for that year was due before January 1, 1983 (without regard to extensions).

A tax shelter under section 6661 is a partnership or other entity (such as a corporation or trust), an investment plan or arrangement, or any other plan or arrangement, if the principal purpose of the partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

An item from a tax shelter is any item of income, gain, loss, deduction, or credit which is directly or indirectly attributable to the principal purpose of the tax shelter to avoid or evade Federal income tax.

Specific Instructions

Be sure to supply all of the information asked for in Parts I, II, and III. Generally, your disclosure will not be considered adequate if you do not supply the information asked for in detail. For example, if, instead of supplying the information asked for on Form 8275, you attach an acquisition agreement to your return to disclose the issues involved in determining the basis of certain acquired assets, your disclosure generally will not be considered adequate.

Part I

Column (a).—Enter a complete description of the item you are disclosing.

If the same tax treatment is claimed for a group of similar items in the same tax year, enter a description of each different group of items on a separate line that identifies the group of items you are disclosing.

Column (b).— Enter the amount of the item or group of items shown in column (a).

Part II

Enter either:

- A description of the facts affecting the tax treatment of the item and the nature of the potential controversy concerning the tax treatment of the item; **or**
- A concise description of the legal issues presented by such facts.

Part III

Line 4.—Contact your pass-through entity if you do not know where they filed their tax return. The information for this item can be found on the Schedule K-1 (Form 1065), Question E, or on Schedule K-1 (Form 1120S), Question B, you received from the partnership or S corporation.