

Instructions for Form 8275

(Revised July 1987)

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 if you wish to make adequate disclosure under section 6661.

Purpose of Form

Section 6661 imposes a penalty if there is a substantial understatement of income tax on your return. However, the penalty will not be imposed on that portion of an understatement which is attributable to items (other than tax shelter items) you adequately disclose on your return or on an attachment to your return. Form 8275 has been developed to provide a format to adequately disclose these items. You may use your own format as long as it meets the requirements of Regulation section 1.6661-4(b).

Note: Also, the penalty will not be imposed on that portion of an understatement that is attributable to certain items for which there was "substantial authority" for the way you reported the item(s) on your return. See the discussion below under **Substantial Understatement**.

The instructions that follow are for those who choose to make adequate disclosure by filing Form 8275.

Who Can File

Form 8275 is filed by individual taxpayers (Form 1040), C corporations, and pass-through entities.

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. If the entity does not make disclosure, a taxpayer 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 **Exception to Filing Form 8275** for more information on revenue procedures.)

When To File

File Form 8275 if either of the following applies:

- You wish to adequately disclose items that may cause an understatement of income tax on your original return. Except for tax shelter items, this will reduce any understatement of tax related to the items you disclose for purposes of the section 6661 penalty.
 - You wish to adequately disclose items on your qualified amended return for purposes of having the section 6661 penalty waived. See Regulation section 1.6661-6(c)(2) for the definition of qualified amended return.
- The rules for filing Form 8275 apply only to original returns that are due after December 31, 1982 (not including extensions). This is true even if there are items carried back from a tax year for which a return is due after 1982.

Tax Shelter Items.—Disclosing a tax shelter item on Form 8275 (or your own statement) will not reduce an understatement on which a section 6661 penalty is imposed. However, see the discussion below under **Substantial Understatement**.

For this purpose, 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.

Exception to Filing Form 8275

In certain cases, items are considered to be adequately disclosed on your return without filing Form 8275 or a similar statement. These are items that meet the requirements of Revenue Procedure 86-22, 1986-1 C.B. 562 (regarding adequate disclosure by filing certain other IRS forms or IRS schedules). For example, you will be considered to have adequately disclosed a charitable contribution deduction if you complete the Contributions section of Schedule A (Form 1040), and you supply all required information. If you make a contribution of property other than cash, the statement required by the Schedule A instructions must be attached to your return.

Note: The subject matter in this revenue procedure is updated annually. Guidance for returns filed in 1984, 1985, and 1986 was provided by Rev. Proc. 84-19, 1984-1 C.B. 433, Rev. Proc. 85-19, 1985-1 C.B. 520, and Rev. Proc. 86-22, 1986-1 C.B. 562.

Carrybacks, Carryovers, and Recurring Items

If you have **carryover** items which you disclosed on a prior year tax return, you do not have to file another Form 8275 for those items in subsequent tax years.

If you have **carryback** items which you disclosed on a tax return filed for the year in which the carryback originated, you do not have to file another Form 8275 for those items in prior tax years.

If you have items you are disclosing that are of a **recurring nature** (such as depreciation expense), you still need to file Form 8275 for each tax year in which the item occurs.

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 on the amount of the understatement.

Note: The penalty amount has increased from 10% to 25% for penalties assessed after October 21, 1986.

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 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 on this form or on another statement attached to the return (see Regulation section 1.6661-4).
- 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. An*

understatement attributable to a tax shelter item will be reduced only if there is substantial authority and reasonable belief.

- 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).

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.

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.

If you are disclosing more than one item and one (or more) is a pass-through item, please identify which item(s) is from the pass-through entity.

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

Part II

Enter either:

- A description of the relevant 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.

Note: *Disclosure will not be considered adequate if the information you provide in Part II consists of information that is not arranged in a manner that reasonably identifies the item, its amount, and the nature of the potential controversy to which the disclosure relates. For example, if instead of supplying the information asked for above, you attach a copy of 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 III

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