

Instructions for Form 8275

(Revised May 1990)

Disclosure Statement

(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 use this form to make adequate disclosure to avoid the portion of the accuracy-related penalty due to a substantial understatement of income tax, negligence or disregard of rules or regulations, or certain preparer penalties.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	3 hrs., 7 min.
Learning about the law or the form48 min.
Preparing and sending the form to IRS53 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the IRS and the Office of Management and Budget at the addresses listed in the instructions of the tax return with which this form is filed.

Changes to Note

Under section 6662, the Revenue Reconciliation Act of 1989 combined a number of penalties into a single **accuracy-related penalty**. These include the penalty for substantial understatement of income tax and the penalty for negligence or disregard of rules or regulations. The accuracy-related penalty, which applies to returns due after December 31, 1989, is imposed at 20% of the portion of the underpayment attributable to a substantial understatement of income tax or to negligence or disregard of rules or regulations.

Under amended section 6694, income tax return preparer penalties have been increased to \$250 for understatements due to unrealistic positions and \$1,000 for willful or reckless conduct.

Although regulations have not been issued for the accuracy-related penalty, Notice 90-20, 1990-10 I.R.B. 17 provides guidance for making disclosure to avoid the portions of the penalty attributable to the substantial understatement of income

tax or negligence or disregard of rules or regulations as well as for the income tax return preparer penalties.

Purpose of Form

Form 8275 is used by taxpayers and income tax return preparers to disclose items on a tax return for purposes of avoiding certain penalties. Specifically, the form is used for disclosures relating to the portions of the accuracy-related penalty due to negligence or disregard of rules or regulations or to a substantial understatement of income tax. It can also be used for disclosures relating to the preparer penalties for understatements due to unrealistic positions or for willful or reckless conduct.

Caution: *Disclosure on Form 8275 will not avoid the portion of the accuracy-related penalty due to a substantial understatement of tax on a tax shelter item.*

Who Should File

Form 8275 is filed by individuals, C corporations, pass-through entities, and income tax return preparers.

For items attributable to a pass-through entity, disclosure should be made on the tax return of the entity. If the entity does not make the disclosure, the partner (or shareholder, etc.) may make adequate disclosure of these items.

When To File

Exception to Filing Form 8275.—For purposes of the substantial understatement portion of the accuracy-related penalty, items that meet the requirements of Revenue Procedure 90-16, 1990-10 I.R.B. 24 are considered adequately disclosed on your return without filing Form 8275. For example, you will 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: *This exception does not apply to the negligence or disregard of rules or regulations portion of the accuracy-related penalty or the preparer penalty for willful or reckless conduct.*

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.

However, if you are disclosing items 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 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 filed its return. Attach to this copy a notation 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 pass-through entity.

Negligence or Disregard of Rules or Regulations

The penalty on underpayments attributable to negligence or disregard of rules or regulations for returns due after December 31, 1989, is different from that applicable to returns due prior to January 1, 1990, in that:

- The rate of the penalty has increased from 5% to 20% and
- The penalty is only imposed on the portion of the understatement attributable to negligence or disregard of rules or regulations rather than on the entire underpayment. The penalty will not be imposed on any part of the underpayment for which it can be shown that there was reasonable cause for your position and that you acted in good faith with respect to the position.

Disclosing a position taken on your return by filing a properly completed Form 8275 will avoid the negligence or disregard of rules or regulations portion of the accuracy-related penalty. However, your disclosure must be complete and specifically identify the item which is being disclosed.

Your position will not be considered sufficiently disclosed by just completing and filing a form, schedule, or line item according to the applicable instructions.

You cannot avoid the penalty by disclosure if you failed to keep proper books and records or failed to substantiate items properly. Disclosure will never avoid the penalty for a frivolous position.

Substantial Understatement

Generally, if there is a substantial understatement of income tax for returns due after December 31, 1989, you may be subject to a penalty of 20% on the amount of the understatement. For returns due before January 1, 1990, the penalty is 25%.

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 for the tax year, or \$5,000 (\$10,000 for a corporation 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.

For purposes of the substantial understatement portion of the accuracy-related penalty, the amount of the understatement will be reduced by the part that is attributable to:

- An item (other than a tax shelter item), for which 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.
- An item (other than a tax shelter item) that is adequately disclosed on this form.
- A tax shelter item, if (1) 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 (2) you held the reasonable belief that the tax treatment of the item was more likely than not the proper tax treatment.

Tax Shelter Items.—A tax shelter, for purposes of the portion of the accuracy-related penalty due to a substantial understatement of tax, is a partnership or other entity (such as a corporation or trust), an investment plan, an investment arrangement, or any other plan or arrangement, if the principal purpose of the entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

A tax shelter item 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.

Income Tax Return Preparer Penalties

Under amended section 6694, the penalties imposed on income tax return preparers have been increased.

A preparer who files an income tax return or claim for refund is subject to a \$250 penalty for taking a position which understates any part of the liability if:

- the position has no realistic possibility of being sustained on its merits, and
- the preparer knew (or reasonably should have known) of the position, and
- the position is frivolous or not adequately disclosed on the return or on Form 8275 .

The penalty will not apply if it can be shown that there was reasonable cause for the understatement and that the preparer acted in good faith.

In cases where any part of the understatement of liability is due to a willful attempt by the return preparer to understate the liability, or if the understatement is due to reckless or intentional disregard of rules or regulations by the preparer, the preparer is subject to a \$1,000 penalty.

As with the negligence or disregard of rules or regulations and the substantial understatement portions of the accuracy-related penalty, the preparer penalties under section 6694 may be avoided in cases where a position is sufficiently disclosed and is not frivolous.

Note: For further information concerning the accuracy-related penalty and preparer penalties, and disclosure as a means of avoiding these penalties, see Notice 90-20, 1990-10 I.R.B. 17.

Specific Instructions

Be sure to supply all of the information requested in Parts I and II, and, if applicable, Part III. Your disclosure will be considered adequate if you supply the information requested in detail.

Part I

Column (a).—Enter a complete description of the item(s) you are disclosing. If you are claiming the same tax treatment for a group of similar items in the same tax year, enter a description identifying the group of items you are disclosing rather than a separate description of each item within the group.

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. If you are disclosing items from more than one pass-through entity, a separate Form 8275 must be completed for each entity. Also, see **Where To File** instructions on page 1.

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 unless the information you provide in Part II reasonably identifies the item, its amount, the location of the item(s) on your return, 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 its return was filed. 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.