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From:

Sent: Thursday, March 05, 2009 9:22:07 AM

To:

Cc:

Subject: RE: Penalty Computation Question

Treas. Reg. 1.6664-2(f) states that carrybacks cannot be used to reduce the amount of an underpayment. Carryforwards are included in determining the amount of the underpayment because they are used in determining the proper amount of tax due and are not specifically excluded from the calculation. The facts you have provided show that the amount of tax required to be shown (as defined in Treas. Reg. § 1.6664-2(b)) is less than the "amount of tax imposed which is shown on the return" (as defined in Treas. Reg. § 1.6662-4(b)(4)). Under these facts an underpayment does not exist and therefore a section 6662 penalty would not apply. An adjustment can only be an adjustment to which a penalty applies if all or a portion of an underpayment is attributable to negligence, a substantial understatement or income tax, a valuation misstatement, an overstatement of pension liabilities, or a substantial estate or gift tax valuation understatement. IRC § 6662(b). The first step is determining that an underpayment exists. Where an underpayment does not exist, it is not necessary to determine why an adjustment is being made.

We are not able to provide a hypothetical computation of the penalty beyond what appears in the examples section of the regulation. We are however, willing and able to review any questions you may have regarding the calculation of a penalty as it relates to a set of specific facts. Please let me know if you have any additional questions or would like to discuss this issue further.