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From:

Sent: Thursday, May 13, 2010 8:19:10 AM

To:

Cc:

Subject: Section 6662A and computational adjustments

In your April 29, 2010 inquiry, you asked whether the calculation of the penalty under 6662A includes increases in income based on computational adjustments which are made as a result of the change in treatment of the listed transaction. Based on your review of the code section, it appears the answer is yes, but you have been unable to find anything specific, in the way of a written interpretation. You are reviewing a number of notices of deficiency pertaining to a particular listed transaction and need to make sure the IRS is taking a consistent position on how this penalty is being calculated.

Our response: Yes, the phrase "reportable transaction understatement," which includes as a component the difference between the proper tax treatment of an item and the taxpayer's treatment, takes into account computational adjustments made as a result of the change in treatment.

Also note that under section 11, the flush language after subsection (b)(1)(A)-(D) can make the highest tax rate more than 35%, depending upon the circumstances. At first glance, this provision appears to make 35% the highest rate. If you review page ix of Volume 1 of the Winter 2010 CCH edition of the IRC, this includes a table of how the rates apply to corporate taxpayers.

I hope that this is helpful.