

defined in § 1.6011-4(b) or § 1.6011-4T(b), as applicable) contrary to a revenue ruling or notice has not disregarded the ruling or notice if the contrary position has a realistic possibility of being sustained on its merits.

(c) \* \* \* (1) \* \* \* No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011-4(b) (or § 1.6011-4T(b), as applicable), the transaction is disclosed in accordance with § 1.6011-4 (or § 1.6011-4T, as applicable)) and, in case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation. \* \* \*

#### § 1.6662-4 [Amended]

■ 5. Section 1.6662-4(g)(1)(iv) is amended by removing the reference to “§ 1.6664-4(e)” and adding the reference “§ 1.6664-4(f)” in its place.

■ 6. Section 1.6664-0 is amended by:

■ 1. Adding entries for § 1.6664-1 (b)(2)(i), (b)(2)(ii) and 1.6664-4(c)(1)(iii).

■ 2. Redesignating the entries for § 1.6664-4(d), (e), (f), and (g), as § 1.6664-4(e), (f), (g), and (h), respectively.

■ 3. Adding a new entry for § 1.6664-4(d).

The additions read as follows:

§ 1.6664-0 Table of contents.

\* \* \* \* \*

§ 1.6664-1 Accuracy-related and fraud penalties, definitions and special rules.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) For returns due after September 1, 1995.

(ii) For returns filed after December 31, 2002.

\* \* \* \* \*

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Reliance on the invalidity of a regulation.

(d) Underpayments attributable to reportable transactions.

\* \* \* \* \*

■ 7. Section 1.6664-1 is amended by:

■ 1. Redesignating the text of paragraph (b)(2) as (b)(2)(i).

■ 2. Adding a new paragraph heading for newly designated paragraph (b)(2)(i).

■ 3. Adding paragraph (b)(2)(ii).

The revisions and additions are as follows:

#### § 1.6664-1 Accuracy-related and fraud penalties; definitions and special rules.

\* \* \* \* \*

(b) \* \* \* (1) \* \* \*

(2) \* \* \* (i) For returns due after September 1, 1995. \* \* \*

(ii) For returns filed after December 31, 2002. Sections 1.6664-4(c) (relating to relying on opinion or advice) and (d) (relating to underpayments attributable to reportable transactions) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (b)(2)(i) of this section, § 1.6664-4 (as contained in 26 CFR part 1 revised April 1, 2003) applies to returns filed with respect to transactions entered into before January 1, 2003.

■ 8. Section 1.6664-4 is amended by:

■ 1. Removing the language “(g) of this section” from the last sentence of paragraph (a) and adding the language “(h) of this section” in its place.

■ 2. Revising paragraph (c)(1) introductory text and the last sentence of paragraph (c)(1)(i).

■ 3. Adding paragraph (c)(1)(iii).

■ 4. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h), respectively.

■ 5. Adding a new paragraph (d).

■ 6. Removing the language “(e)” wherever it appears in newly designated paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), (f)(3), and (f)(4) and adding the language “(f)” in its place.

■ 7. Removing the language “(g)” wherever it appears in newly designated paragraphs (h)(1), (h)(1)(i), (h)(2), and (h)(3) and adding the language “(h)” in its place.

The revisions and additions read as follows:

#### § 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

\* \* \* \* \*

(c) *Reliance on opinion or advice*—(1)

*Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan, or arrangement) under Federal tax law. For example, the taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on tax advice was reasonable and made in good faith. In no event will a taxpayer be considered to have

reasonably relied in good faith on advice (including an opinion) unless the requirements of this paragraph (c)(1) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) \* \* \* In addition, the requirements of this paragraph (c)(1) are not satisfied if the taxpayer fails to disclose a fact that it knows, or reasonably should know, to be relevant to the proper tax treatment of an item.

\* \* \* \* \*

(iii) *Reliance on the invalidity of a regulation.* A taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and good faith unless the taxpayer adequately disclosed, in accordance with § 1.6662-3(c)(2), the position that the regulation in question is invalid.

(d) *Underpayments attributable to reportable transactions.* If any portion of an underpayment is attributable to a reportable transaction, as defined in § 1.6011-4(b) (or § 1.6011-4T(b), as applicable), then failure by the taxpayer to disclose the transaction in accordance with § 1.6011-4 (or § 1.6011-4T, as applicable) is a strong indication that the taxpayer did not act in good faith with respect to the portion of the underpayment attributable to the reportable transaction.

\* \* \* \* \*

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 301

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#### Confidential Transactions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.