

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

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

(a) *In general.* No [penalty](#) may be imposed under section 6662 with respect to any portion of an underpayment upon a showing by [the taxpayer](#) that there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. [Rules](#) for determining whether the reasonable cause and good faith [exception](#) applies are set forth in paragraphs (b) through (h) of this section.

(b) *Facts and circumstances taken into account—*

(1) *In general.* The [determination](#) of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case [basis](#), taking into account all pertinent facts and circumstances. (See [paragraph \(e\)](#) of this section for certain rules relating to a substantial [understatement](#) penalty attributable to [tax shelter items](#) of [corporations](#).) Generally, the most important [factor](#) is the extent of the taxpayer's effort to assess the taxpayer's proper [tax liability](#). Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of [fact](#) or law that is reasonable

in light of all of the facts and circumstances, including the experience, knowledge, and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the [advice](#) of a professional [tax](#) advisor or an appraiser does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice, or [other](#) facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. (See [paragraph \(c\)](#) of this section for certain rules relating to reliance on the advice of others.) For [example](#), reliance on erroneous information (such as an error relating to the [cost](#) or [adjusted basis](#) of [property](#), the date property was [placed in service](#), or the [amount](#) of opening or closing [inventory](#)) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial [books](#) and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal [controls](#) and [procedures](#), reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the [value](#) of property. Other factors to consider include the methodology and [assumptions](#) underlying the appraisal, the appraised value, the relationship between appraised value and [purchase price](#), the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the [activity](#) in which the property is

used. (See [paragraph \(g\)](#) of this section for certain rules relating to appraisals for [charitable deduction property](#).) A taxpayer's reliance on erroneous information reported on a Form W-2, Form 1099, or [other information](#) return indicates reasonable cause and good faith, provided the taxpayer did not know or have [reason to know](#) that the information was incorrect. Generally, a taxpayer knows, or has reason to know, that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the [transaction](#). This knowledge includes, for example, the taxpayer's knowledge of [the terms](#) of his employment relationship or of the rate of return on a [payor's obligation](#).

(2) Examples. The [following](#) examples illustrate this paragraph (b). They do not involve tax shelter items. (See [paragraph \(e\)](#) of this section for certain rules relating to the substantial understatement penalty attributable to the tax shelter items of corporations.)

Example 1.

A, an [individual calendar year](#) taxpayer, engages B, a professional tax advisor, to give A advice concerning the deductibility of certain [state](#) and local taxes. A provides B with full details concerning the taxes at [issue](#). B advises A that the taxes are fully deductible. A, in preparing his own [tax return](#), claims a [deduction](#) for the taxes. Absent other facts, and assuming the facts and circumstances surrounding B's advice and A's reliance on such advice satisfy the [requirements](#) of [paragraph \(c\)](#) of this section, A is considered to have demonstrated good faith by seeking the advice of a professional tax advisor, and to have shown reasonable cause for any underpayment

attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that A knew, or should have known, lacked knowledge in the relevant aspects of Federal tax law, or if other facts demonstrate that A failed to [act](#) reasonably or in good faith, A would not be considered to have shown reasonable cause or to have acted in good faith.

Example 2.

C, an individual, sought advice from D, a friend who was not a tax professional, as to how C might reduce his Federal tax obligations. D advised C that, for a nominal [investment](#) in Corporation X, D had received certain [tax benefits](#) which virtually eliminated D's Federal tax liability. D also named other investors who had received similar [benefits](#). Without further inquiry, C invested in X and claimed the benefits that he had been assured by D were due him. In this case, C did not make any good faith attempt to ascertain the correctness of what D had advised him concerning his tax matters, and is not considered to have reasonable cause for the underpayment attributable to the benefits claimed.

Example 3.

E, an individual, worked for Company X doing odd jobs and filling in for other [employees](#) when necessary. E worked irregular hours and was [paid](#) by the hour. The amount of E's pay check differed from week to week. The Form W-2 furnished to E reflected wages for 1990 in the amount of \$29,729. It did not, however, include [compensation](#) of \$1,467 paid for some hours E worked. Relying on the Form W-2, E filed a return [reporting](#) wages of \$29,729. E had no reason to know that the amount reported on the Form W-2 was incorrect. Under the circumstances, E is considered to have acted in good faith in relying on the Form W-2 and to have reasonable

cause for the underpayment attributable to the unreported wages.

Example 4.

H, an individual, did not enjoy preparing his tax returns and procrastinated in doing so until April 15th. On April 15th, H hurriedly gathered together his tax records and materials, prepared a return, and mailed it before midnight. The return contained numerous errors, some of which were in H's favor and some of which were not. The net **result** of all the **adjustments**, however, was an underpayment of tax by H. Under these circumstances, H is not considered to have reasonable cause for the underpayment or to have acted in good faith in attempting to file an accurate return.

(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) *All facts and circumstances considered.* The advice must be based upon all pertinent facts and circumstances and the law as it relates to those facts and circumstances. For example, the advice must take into account the taxpayer's purposes (and the relative weight of such purposes) for entering into a transaction and for structuring a transaction in a particular manner. 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](#).

(ii) *No unreasonable assumptions.* The advice must not be based on unreasonable factual or legal assumptions (including assumptions as to future events) and must not unreasonably rely on the representations, statements, findings, or agreements of the taxpayer or any other person. For example, the advice must not be based upon a representation or assumption which the taxpayer knows, or has reason to know, is unlikely to be true, such as an inaccurate representation or assumption as to the taxpayer's purposes for entering into a transaction or for structuring a transaction in a particular manner.

(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.

(2) *Advice defined.* Advice is any communication, including the opinion of a professional tax advisor, setting forth the analysis or conclusion of a person, other than the taxpayer, provided to (or for the benefit of) the taxpayer and on which the taxpayer relies, directly or indirectly, with respect to the imposition of the section 6662 accuracy-related penalty. Advice does not have to be in any particular form.

(3) *Cross-reference.* For rules applicable to advisors, see e.g., §§ 1.6694-1 through 1.6694-3 (regarding preparer penalties), 31 CFR 10.22 (regarding diligence as to accuracy), 31 CFR 10.33 (regarding tax shelter opinions), and 31 CFR 10.34 (regarding standards for advising with respect to tax return positions and for preparing or signing returns).

(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.

(e) *Pass-through items.* The determination of whether a taxpayer acted with reasonable cause and in good faith with respect to an underpayment that is related to an item reflected on the return of a pass-through entity is made on the basis of all pertinent facts and

circumstances, including the taxpayer's own actions, as well as the actions of the pass-through entity.

(f) *Special rules for substantial understatement penalty attributable to tax shelter items of corporations*—(1) *In general; facts and circumstances.*

The determination of whether a corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item (as defined in § 1.6662-4(g)(3)) is based on all pertinent facts and circumstances. Paragraphs (f)(2), (3), and (4) of this section set forth rules that apply, in the case of a penalty attributable to a substantial understatement of income tax (within the meaning of section 6662(d)), in determining whether a corporation acted with reasonable cause and in good faith with respect to a tax shelter item.

(2) *Reasonable cause based on legal justification*—

(i) *Minimum requirements.* A corporation's legal justification (as defined in paragraph (f)(2)(ii) of this section) may be taken into account, as appropriate, in establishing that the corporation acted with reasonable cause and in good faith in its treatment of a tax shelter item only if the authority requirement of paragraph (f)(2)(i)(A) of this section and the belief requirement of paragraph (f)(2)(i)(B) of this section are satisfied (the minimum requirements). Thus, a failure to satisfy the minimum requirements will preclude a finding of reasonable cause and good faith based (in whole or in part) on the corporation's legal justification.

(A) *Authority requirement.* The authority requirement is satisfied only if there is substantial authority (within the meaning of § 1.6662-4(d)) for the tax treatment of the item.

(B) *Belief requirement.* The belief requirement is satisfied only if, based on all facts and circumstances, the corporation reasonably believed, at the time the return was filed, that the tax treatment of the item was **more** likely than not the proper treatment. For purposes of the preceding sentence, a corporation is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if (without taking into account the possibility that a return will not be audited, that an issue will not be raised on audit, or that an issue will be settled)—

- (1)** The corporation analyzes the pertinent facts and authorities in the manner described in § 1.6662-4(d)(3)(ii), and in reliance upon that analysis, reasonably concludes in good faith that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or
- (2)** The corporation reasonably relies in good faith on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in § 1.6662-4(d)(3)(ii) and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service. (For this purpose, the requirements of **paragraph (c)** of this section must be met with respect to the opinion of a professional tax advisor.)

(ii) *Legal justification defined.* For purposes of this paragraph (e), *legal justification* includes any justification relating to the treatment or characterization under the Federal tax law of the tax shelter item or of the entity, plan, or arrangement that gave rise to the item. Thus, a taxpayer's belief (whether independently formed or based on the advice of others) as to the merits of the taxpayer's underlying position is a legal justification.

(3) *Minimum requirements not dispositive.*

Satisfaction of the minimum requirements of [paragraph \(f\)\(2\)](#) of this section is an important factor to be considered in determining whether a corporate taxpayer acted with reasonable cause and in good faith, but is not necessarily dispositive. For example, depending on the circumstances, satisfaction of the minimum requirements may not be dispositive if the taxpayer's [participation](#) in the tax shelter lacked significant business purpose, if the taxpayer claimed tax benefits that are unreasonable in comparison to the taxpayer's investment in the tax shelter, or if the taxpayer agreed with the organizer or promoter of the tax shelter that the taxpayer would protect the confidentiality of the tax aspects of the structure of the tax shelter.

(4) *Other factors.* Facts and circumstances other than a corporation's legal justification may be taken into account, as appropriate, in determining whether the corporation acted with reasonable cause and in good faith with respect to a tax shelter item regardless of whether the minimum requirements of [paragraph \(f\)\(2\)](#) of this section are satisfied.

(g) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(h) *Valuation misstatements of charitable deduction property*—(1) *In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (h)(2) of this section) only if—

(i) The claimed value of the property was based on a **qualified appraisal** (as defined in paragraph (h)(2) of this section) by a **qualified appraiser** (as defined in paragraph (h)(2) of this section); and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(2) *Definitions.* For purposes of this paragraph (h):

Charitable deduction property means any property (other than money or publicly traded securities, as defined in § 1.170A-13(c)(7)(xi)) contributed by the taxpayer in a **contribution** for which a deduction was claimed under section 170.

Qualified appraisal means a qualified appraisal as defined in § 1.170A-13(c)(3).

Qualified appraiser means a qualified appraiser as defined in § 1.170A-13(c)(5).

(3) *Special rules.* The rules of this paragraph (h) apply regardless of whether § 1.170A-13 permits a taxpayer

to [claim](#) a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (h) apply in addition to the generally [applicable rules](#) concerning reasonable cause and good faith.

[T.D. 8381, [56 FR 67508](#), Dec. 31, 1991; T.D. 8381, [57 FR 6166](#), Feb. 20, 1992, as amended by T.D. 8617, [60 FR 45666](#), Sept. 1, 1995; T.D. 8790, [63 FR 66435](#), Dec. 2, 1998; T.D. 9109, [68 FR 75128](#), Dec. 30, 2003]