

Instructions for Form 8275-R (Rev. July 2007)

Purpose: This is the first circulated proof of the Instructions for Form 8275-R (Rev. July 2007) for your review and comments. See below for a discussion of the major changes.

TPCC Meeting: None, but one may be arranged if requested.

Prior Version: The Instructions for Form 8275 (Rev. February 2006) is available at: <http://www.irs.gov/pub/irs-pdf/i8275.pdf>

Form: Form 8275-R (Rev. February 2002) is to be used with these instructions. It is available at: <http://www.irs.gov/pub/irs-pdf/f8275r.pdf>

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at:
http://taxforms.web.irs.gov/draft_products.html

Comments: Please email, fax, call, or mail any comments by **June 15, 2007**,

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Major Changes to the Instructions for Form 8275-R (Rev. July 2007)

- The instructions for completing Part II were rewritten at Chief Counsel's request to elaborate on the filing requirements.
- The instructions for Part III were expanded for proper completion by e-filers at the direction of the Modernized E-file Project.

Instructions for Form 8275-R

(Rev. July 2007)



Department of the Treasury
Internal Revenue Service

DRAFT

(Use with the February 2002 revision of Form 8275-R.)
Regulation Disclosure Statement

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Form 8275-R is used by taxpayers and income tax preparers to disclose positions taken on a tax return that are contrary to Treasury regulations. The form is filed to avoid the portions of the accuracy-related penalty due to disregard of regulations or to a substantial understatement of income tax for non-tax shelter items if the return position has a reasonable basis. It can also be used for disclosures relating to the preparer penalties for income tax understatements due to positions taken contrary to regulations.



The portion of the accuracy-related penalty attributable to the following types of misconduct cannot be avoided by disclosure on Form 8275-R.

- *Negligence.*
- *Disregard of rules.*
- *Any substantial understatement of income tax.*
- *Any substantial valuation misstatement under chapter 1.*
- *Any substantial overstatement of pension liabilities.*
- *Any substantial estate or gift tax valuation understatements.*

Because of the importance to the self-assessment system of disclosing positions contrary to regulations, the requirements for making such disclosures are stringent.

- The disclosure is adequate only if it is made separately on a Form 8275-R.
- The penalty for reckless or intentional disregard of a regulation may be avoided by disclosure only if the position represents a good faith challenge to the validity of the regulation and has a reasonable basis.

Instead of Form 8275-R, use Form 8275, Disclosure Statement, for the disclosure of items or positions which are not contrary to regulations but which are not otherwise adequately disclosed.

Who Should File

Form 8275-R is filed by individuals, 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.

How To File

When a return position is contrary to regulations, you must file Form 8275-R. File all Forms 8275-R with your original tax return. Keep a copy for your records. You also may be able to file Forms 8275-R with an amended return. See Regulations sections 1.6662-4(f) and 1.6664-2(c)(3) for more information.

To make adequate disclosure for items reported by a pass-through entity, you must complete and file a separate Form 8275-R for items reported by each entity.

Carrybacks, carryovers, and recurring items. Carryover items must be disclosed in the tax year in which they originated. You do not have to file another Form 8275-R for those items for the tax years in which the carryover is taken into account.

Carryback items must be disclosed for the tax year in which they originated. You do not have to file another Form 8275-R for those items for the tax years in which the carryback is taken into account.

However, if you disclose items that are of a recurring nature (such as depreciation expense), you must file Form 8275-R for each tax year in which the item occurs.

If you are disclosing a position that is contrary to a regulation, and the position relates to a reportable transaction as defined in Regulations section 1.6011-4(b), you must also make the disclosure required by Regulations section 1.6011-4(b). See Form 8886, Reportable Transaction Disclosure Statement, its instructions, and Rev. Proc. 2004-45, which is on page 140 of Internal Revenue Bulletin 2004-31 at <http://www.irs.gov/pub/irs-irbs/irb04-31.pdf>.

Accuracy-Related Penalty

Generally, the accuracy-related penalty is 20% of any portion of a tax underpayment attributable to:

1. Negligence or disregard of rules or regulations,
2. Any substantial understatement of income tax,
3. Any substantial valuation misstatement under chapter 1 of the Internal Revenue Code,
4. Any substantial overstatement of pension liabilities, or
5. Any substantial estate or gift tax valuation understatement.

However, the penalty is 40% of any portion of a tax underpayment attributable to one or more gross valuation misstatements in (3), (4), or (5) above if the applicable dollar limitation under section 6662(h)(2) is met.

Reasonable basis. Generally, you can avoid the disregard of regulations and substantial understatement portions of the accuracy-related penalty if the position is adequately disclosed and the position has at least a reasonable basis. To avoid the disregard of regulations portion of the accuracy-related penalty, the position taken must also represent a good-faith challenge to the validity of the regulation. Reasonable basis is a relatively high standard of tax reporting that is significantly higher than not frivolous or not patently

improper. The reasonable basis standard is not satisfied by a return position that is merely arguable.

The penalty will not be imposed on any part of an underpayment if there was reasonable cause for your position and you acted in good faith in taking that position.

If you failed to keep proper books and records or failed to substantiate items properly, you cannot avoid the penalty by disclosure.

Substantial Understatement

An understatement is the excess of:

1. The amount of tax required to be shown on the return for the tax year, over
2. The amount of tax shown on the return for the tax year, reduced by any rebates.

There is a substantial understatement of income tax if the amount of the understatement for any year exceeds the greater of:

1. 10% of the tax required to be shown on the return for the tax year, or
2. \$5,000 (\$10,000 for a corporation other than an S corporation or a personal holding company as defined in section 542).

For tax years beginning after October 22, 2004, an understatement of a corporation (other than an S corporation or a personal holding company) is substantial if it exceeds the lesser of:

1. 10% of the tax required to be shown on the return for the tax year (or, if greater, \$10,000), or
2. \$10,000,000.

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 the following items.

- 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 tax year to which the return relates.
- An item (other than a tax shelter item) that is adequately disclosed on this form if there is a reasonable basis for the tax treatment of the item. (In no event will a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multi-party financing transaction entered into after August 5, 1997, if the treatment does not

clearly reflect the income of the corporation.)

- A tax shelter item (other than a corporate tax shelter item), for tax years ending before October 23, 2004, if (a) there was substantial authority for the treatment at the time the return was filed or on the last day of the tax year to which the return relates, and (b) you reasonably believed that the tax treatment of the item was more likely than not the proper tax treatment.

For corporate tax shelter transactions (and for tax shelter items of other taxpayers for tax years ending after October 22, 2004), the only exception to the substantial understatement portion of the accuracy-related penalty is the reasonable cause exception. For more details, see section 1.6664-4(f).

Tax shelter items. A tax shelter, for purposes of the substantial understatement portion of the accuracy-related penalty, is a partnership or other entity, plan, or arrangement, with a significant purpose to avoid or evade federal income tax. For transactions on or before August 5, 1997, a tax shelter is a partnership or other entity, plan, or arrangement, whose principal purpose is to avoid or evade federal income tax.

A tax shelter item is any item of income, gain, loss, deduction, or credit that is directly or indirectly attributable to the principal or significant purpose of the tax shelter to avoid or evade federal income tax.

Income Tax Return Preparer Penalties

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,
- 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 the appropriate disclosure statement.

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 the 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.

A preparer is not considered to have recklessly or intentionally disregarded a regulation if the position is adequately disclosed, is not frivolous, and the position represents a good faith challenge to the validity of the regulation.

Note. For more information about the accuracy-related penalty and preparer penalties, and the means of avoiding these penalties, see Regulations sections 1.6662, 1.6664, and 1.6694.

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 file Form 8275-R and supply the information requested in detail.

Use Part IV on page 2 if you need more space for Part I or II. Indicate the corresponding part and line number from page 1. You can use a continuation sheet(s) if you need additional space. Be sure to put your name and identifying number on each sheet.

Part I

Column (a). Enter a detailed citation for each regulation for which you have taken a contrary position.

Column (b). Identify the item by name.

If any item you disclose is from a pass-through entity, you must identify the item as such. If you disclose items from more than one pass-through entity, you must complete a separate Form 8275-R for each entity. Also, see *How To File* on page 1.

Column (c). Enter a complete description of the item(s) you are disclosing.

Example. If an entertainment expense was reported in column (b), then list in column (c) "theater tickets, catering expenses, and banquet hall rentals."

If you claim 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.

Columns (d) through (f). Enter the location of the item(s) by identifying the form number or schedule and the line number in columns (d) and (e) and the amount of the item(s) in column (f).

Part II

Your disclosure must include:

1. A description of the relevant facts affecting the tax treatment of the item. To satisfy this requirement you must include information that reasonably may be expected to apprise the IRS of the identity of the item, its amount, and the nature of the controversy or potential controversy. Information concerning the nature of the controversy may include a description of the legal issues presented by the facts, and
2. A statement explaining why you believe this regulation to be invalid.



Disclosure will not be considered adequate unless (1) and (2) above are provided using Form 8275-R. For example, your disclosure will not be considered adequate if you attach a copy of an acquisition agreement to your tax return to disclose the issues involved in determining the basis of certain acquired assets. If Form 8275-R is not completed and attached to the

return, the disclosure will not be considered valid even if the information in (1) and (2) above is provided using another method, such as a different form or an attached letter.

Part III

Line 4. Contact your pass-through entity if you do not know where its return was filed. However, for partners and S corporation shareholders, information for line 4 can be found on the Schedule K-1 that you received from the partnership or S corporation.

If the pass-through entity filed its return electronically using *e-file*, enter “e-file” on line 4.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the 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 or disregard of regulations, or to avoid certain preparer penalties. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that

is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	3 hr., 35 min.
Learning about the law or the form	53 min.
Preparing and sending the form to the IRS	59 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.