Taxation of Corporations and their Shareholders

Chapter 17

Tax Penalties

UNC Charlotte
Master of Accountancy Program

April 27, 2015

Penalties for Late Filing and Late Payment [Section 6651] (Basic rules only here)

A "failure to file" penalty is 5% of the amount of tax required to be shown on the return (less any earlier payments and credits) for the first month, plus an additional 5% for each month (or fraction of a month) but not more than 25%. The failure-to-file penalty (5%) is reduced by the amount of any failure-to-pay penalty (1/2%) for that month.
A "failure-to-pay" penalty is imposed on taxpayer who (without reasonable cause) fails to pay the tax shown on a return or an assessed deficiency of that tax by the prescribed date. The penalty is ½ % of tax shown (or assessed) for each month (or fraction of a month) that it isn't paid (but not more than 25%). An individual who gets an automatic extension of time for *filing* is subject to the penalty (absent reasonable cause) if the balance due with the extended return*:* **(1)** exceeds 10% of the total shown on Form 1040, *or* **(2)** isn't paid by the extended filing date.

1. Billy filed 2014 tax return on August 5, 2015, without requesting an extension. His total tax was $10,000. He had no withholding tax and he made no estimated tax payments. He paid $10,000 with return filed on August 5, 2015? What is the total amount of his failure to file and failure to pay penalties?

a. $500 **b.** $550 **c.** $2,000 **d.** $2,200 **e.** None of these

Estimated Tax for Individuals (These are the basic rules. There are various exceptions.) [Section 6654]

Any individual who has estimated tax for the year of $1,000 or more *and* whose withholding does not equal or exceed the "required annual payment" must make quarterly payments. Otherwise, a penalty may be assessed. The required annual payment is the *smaller* of the following amounts:

1. Ninety percent of the tax shown on the current year's return.
2. One hundred percent of the tax shown on the preceding year's return (the return must cover the full 12 months of the preceding year). If the AGI on the preceding year's return exceeds $150,000 ($75,000 if married filing separately), the 100% requirement is increased to 110%.

2. This year, Paula and Simon (married filing jointly) estimate that their tax liability will be $200,000. Last year, their total tax liability was $170,000. They estimate that their tax withholding from their employers will be $175,000. Paula and Simon increase their withholdings or make estimated tax payments of what amount this year to avoid the underpayment penalty? (That amount will be paid in quarterly installments.)

a. $0 **b.** $500 **c.** $1,000 **d.** $5,000 **e.** None of these

Estimated Tax for corporations (These are the basic rules. There are various exceptions.)

A corporation that expects to owe more than $500 in tax for the current year must pay the "required annual payment" in four installments of estimated tax. For corporations other than large corporations, the required annual payment is the lesser of: (1) 100% of the tax shown on the current year return or (2) 100% of the tax shown on the preceding year return. A corporation may not base its required estimated tax amount on the tax shown on the preceding year return if that tax return showed a zero tax liability. The estimated tax amount is the sum of the corporation's income tax and alternative minimum tax liabilities that exceeds its tax credits.

3. Garden Corporation, a calendar year taxpayer, will have a regular income tax liability of $144,000, before estimated tax payments. Garden is not a large corporation, does not owe AMT and will have no credit other than its credit for estimated tax payments. Garden's tax liability last year was $120,000.
What is the amount of each quarterly estimated tax payment that Garden should make to avoid a penalty for underpayment of estimated tax?

a. $0 **b.** $500 **c.** $30,000 **d.** $36,000 **e.** None of these

Penalties – Underpayment of Estimated Tax - Individuals [Section 6654]

4. Krete, an unmarried taxpayer with income exclusively from wages, filed her initial income tax return for Year 8. By December 31, Year 8, Krete's employer had withheld $16,000 in federal income taxes and Krete had made no estimated tax payments.
On April 15, Year 9, Krete timely filed an extension request to file her individual tax return and paid $300 of additional taxes. Krete's Year 8 income tax liability was $16,500 when she timely filed her return on April 30, Year 9, and paid the remaining income tax liability balance.
What amount is subject to the penalty for the underpayment of estimated taxes?

a. $0 **b.** $200 **c.** $500 **d.** $16,500 **e.** Other

5. Warren Buffett's total federal tax liability for was $20,000 for 2014. His AGI last year did not exceed $150,000 in 2013. Warren Buffett will have a regular tax liability of $26,000 for 2015. Warren will have $6,000 of taxes withheld from his 2015 salary. To avoid a penalty for underpayment of estimated tax, how much total estimated tax payments (for four quarters combined) should Warren make for 2014?

a. $18,000 **b.** $16,000 **c.** $14,000 **d.** $16,500 **e.** Other

Accuracy Related Penalties [Section 6662, 6664, 6694]

6. Which of the following factors will enable a client to avoid the accuracy related penalty, even though the IRS disallows an exclusion or deduction? (Assume the return did not contain a disclosure of the relevant facts related to the exclusion or deduction.)

a. There is a reasonable basis for the treatment of the item by the taxpayer.
b. There is substantial authority for treatment of the item by the taxpayer.
c. There is a reasonable possibility the treatment of the item will be sustained.

7. Your client reported salary income of $300,000. He paid $100,000 to his former spouse as required by the divorce decree. You had substantial doubt about whether the payment to the former spouse qualifies as alimony.

You prepared a draft of the return without deducting the alimony. Your draft return showed income tax before credits of $77,000. After meeting with your client to discuss the issue, and after conducting additional research, you modified the return to show a deduction of $100,000 for alimony paid. The revised tax return showed income tax before credits of $44,000.

The revised return was filed on time, and the balance due was paid when the return was filed.

IRS has audited the return. The IRS proposed a disallowance of the alimony deduction, a deficiency of $33,000, and an accuracy related penalty.
How much penalty will the IRS propose under section 6662?

a. $3,300 **b.** $6,600 **c.** $10,000 **d.** $20,000 **e.** Other

Statute of Limitations [Section 6501(a), 6511, 7502(a)]

8. A single taxpayer filed her 2012 income tax return on March 15, 2013, showing gross income of $90,000, and deductions of $60,000. She had mistakenly overstated her itemized deductions by $5,000.
What is the latest date by which the IRS may assert a notice of deficiency?

a. March 15, 2016 **b.** April 15, 2016 **c.** March 15, 2017 **d.** April 15, 2017 **e.** April 15, 2017

9. A calendar-year, single taxpayer, reported a gross income of $100,000 on his 2014 income tax return. He inadvertently omitted from gross income was a $40,000 commission that should have been included in income for 2014. He filed his 2014 return on March 15, 2015.
To collect the tax on the $40,000 omission, the IRS must assert a notice of deficiency no later than

a. March 15, 2017. **b.** April 15, 2017. **c.** March 15, 2021 **d.** April 15, 2021

10. Charlotte Corp., a calendar-year corporation, mailed its 2014 tax return to the Internal Revenue Service by certified mail on March 11, 2015.
The return, postmarked March 11, 2015, was delivered to the IRS on March 18, 2015.
The statute of limitations on Charlotte's corporate tax return begins on:
a. December 31, 2014 b. March 11, 2014 c. March 15, 2015 d. March 18, 2015 CPA Nov. 1994

11. A taxpayer filed her 2014 income tax return on February 15, 2015.
She later discovered that she failed to take an exemption for her son on the 2014 tax return. Otherwise, the tax return was correct.
What is the latest date by which she may file a claim for refund for 2014?

a. March 15, 2015 **b.** April 15, 2015 **c.** Feb. 15, 2018 **d.** April 15, 2018 **e.** April 15, 2021

12. Fred Wrong filed his 2014 income tax return on March 15, 2015, showing gross income of $60,000, and deductions of $40,000. He had mistakenly overstated his deductions by $18,000.
What is the latest date by which the IRS may assert a notice of deficiency?

a. March 15, 2018 **b.** April 15, 2018 **c.** March 15, 2019 **d.** April 15, 2019 **e.** April 15, 2021

No		Answers to sample test questions				Citation
1	C	**Compute late filing penalty**				6651
		Penalty for failure to file is 5% per month, up to 5 months.				
		Penalty for failue to pay is .5% per month. (Max. 25%)				
		Failure to file penalty is reduced by failure to pay penalty (.5%)				
		In effect, total penalty is 5% per month, for first few months.				
		Amount Underpaid	$10,000			301.6651 b
		Rate per month the payment is late	5.0%			
		Penalty per month	$500.00			
		Number of months	4			
		Late filing & late payment penalty	**$2,000**			
2	D	**Individual Estimated Tax Payments**				
		Amount of income tax liability			$200,000	
		Current year percentage - Minimum Est. Payments			90%	
		Minimum estimated payments-90% Rule			$180,000	
		Prior year tax	$170,000	110%	$187,000	
		Actual withholding			$175,000	
		Estimated tax payments required			$5,000	
3	C	**Corporate estimated tax payments**				
		Current Tax liability before credits for estimated payments			$144,000	
		Prior Yr Tax liability before credits for estimated payments			$120,000	
		Quarterly payments			$30,000	
4	A	**Krete - Individual Estimated Tax Payments**				
		Amount of income tax liability	Year 8		$16,500	
		Current year percentage - Minimum Est. Payments			90%	
		Minimum estimated payments			$14,850	6654(d)(1)(B)(i)
		Actual withholding			$16,000	
5	C	**Tax liability in 2014**			**$20,000**	
		Tax liability in 2015			$26,000	
		90% of current liability			**$23,400**	
		Lesser of two amounts			$20,000	
		Less: withholding			($6,000)	
		Total estimated tax payments			$14,000	
6	B	**Accuracy related penalty**				6662(d)(2)(B)
7	B	**Amount of Sec. 6662 Penalty**				
8	B	**Betty**				6501 a
		Date the tax return was mailed	3/15/13			6501 e
		Normal filing deadline	4/15/13			
		Add 3 years	**4/15/16**			
		This was a deduction overstatement				

No		Answers to sample test questions		Citation
9	D	**Keen-was keen**		6501(e)
		Date the tax return was mailed	3/15/12	
		Normal filing deadline	4/15/12	6501(b)(1)
		Add 6 years	**4/15/18**	
		Taxpayer omitted 25% or more of income.		
		Six year limit applies to substantial (25%) omission of income.		6501(e)(1)(A)
		Note special definition of gross income (actually gross revenue).		
10	C	**When statute of limitations expires.**		6501 a
		Jackson Corporation		6501 b
		Date the tax return was mailed	3/11/14	7502 a
		Date the tax return was postmarked	3/11/14	
		Date tax return received by IRS	3/18/14	
		Normal filing deadline	**3/15/14**	
		Timely mailing is timely filing.		
		Statute begins on later of: (1) filing date or (2) due date		
		Return filed early is treated as being filed on deadline.		
11	D	**Susie Quick**		6501 a
		Date the tax return was mailed	2/15/12	6501 b
		Normal filing deadline	4/15/12	
		Add 3 years	**4/15/15**	
12	B	**Fred Wrong**		6501 e
		Date the tax return was mailed	3/15/13	
		Normal filing deadline	4/15/13	6501(b)(1)
		Add 3 years	**4/15/16**	
		Six year limit applies to omission of "income."		
		This question involves overstatment of deductions. (Honest Mistake).		

Joseph Peery & Dawn Shannon Chapel. T.C. Memo. 2014-151 (Jul. 29, 2014) [abbreviated by Instructor]
[Appealable, barring stipulation to the contrary, to CA-6.—CCH.], [Code Sec. 71]

Joseph Peery married Ms. Peery on May 21, 1971. Ms. Peery was granted a divorce from Joseph on June 9, 2008,. The separation agreement, dated June 6, 2008, addressed numerous issues, including the division of marital assets and spousal support to be paid by Joseph to Ms. Peery.

Paragraph 1 of the separation agreement sets forth certain items of "property" that Ms. Peery "shall have as her own, free and clear of all claims of Joseph. As part of her property rights, subparagraph 1(I) of the separation agreement assigns to Ms. Peery
"[a]n award of property settlement in the sum of $63,500.00, which amount shall be paid within thirty (30) days" of June 6, 2008.
Further, in order to "equalize the division of marital assets" between Joseph and Ms. Peery, paragraph 5 of the separation agreement provides Ms. Peery with an additional property settlement of $85,723.

Paragraph 2 of the separation agreement provides that "spousal support" is to be paid by Joseph to Ms. Peery "until such time as she remarries, is deceased or Joseph is deceased."

Paragraph 2 of the separation agreement states, in relevant part:

A. Spousal support shall be equal to 40% of all income earned by * * * [Joseph]. Income shall include, but not be limited to the following:

1. All wages. ..2. All net self-employment income …3. All guaranteed payments.

Furthermore, paragraph 4 of the separation agreement assigns Joseph various properties:

E. All financial institution accounts in his individual name.
F. All right, title and interest * * * [Joseph] owns in [several corporations], …

In addition to the above payments, Joseph wrote a $63,500 check—check No. 1040—payable to Ms. Peery and dated July 23, 2008.

Josephs timely filed their 2008 Federal income tax return. On the return, **Josephs claimed a deduction from gross income of $90,264 for alimony paid to Ms. Peery during the tax year.**

On October 12, 2011, the IRS issued to Josephs a notice of deficiency for 2008.

The IRS determined an $18,369 deficiency in Josephs' 2008 Federal income tax and an accuracy-related penalty under section 6662(a). [While the court did not disclose the amount of tax after credits on the return, we will assume that the tax return filed by the taxpayers showed the amount of federal income tax after credits to be $30,000, which the IRS says was understated by $18,369.]

Joseph and his second wife (Dawn Shannon Chapel) timely filed a petition disputing the determinations in the notice of deficiency. The issues for decision were:
(1) whether a $63,500 payment Joseph Peery (Joseph) made to Katrina H. Peery (Ms. Peery, former wife) was alimony or a property settlement; and
(2) whether Josephs are liable for an accuracy-related penalty under section 6662(a) for a substantial understatement of income tax.

Assume the IRS is correct, and the payment of $63,500 is a non-deductible property settlement.

1. How do you determine if the understatement is substantial?
2. How much penalty under Section 6662 will be proposed by the IRS?
3. Assume you prepared the return, and charged a $3,600 fee return preparation.
   What is the amount of the penalty under Section 6694 that the IRS may potentially assess against you, the preparer?
4. Please explain some factors (or reasons) that may be presented by the taxpayer to convince the IRS or the court that the Section 6692 penalty should not be imposed.

Joseph Peery - Divorce and Alimony

During the tax year, Joseph Peery made total payments of $90,264 to Ms. Peery.
(Ms. Peery is Joseph's former wife.)
The payments were made in compliance with his divorce agreement with Ms. Peery.
Joseph claimed an alimony deduction in the amount of $90,264.
Joseph believes that all of the payments of $90,264 qualify as deductible alimony.
The tax return showed the amount of federal income tax after credits to be $30,000.
The IRS issued a notice of deficiency to the taxpayers.
The IRS seeks to disallow $63,500 of the deduction, claiming it is a property settlement.
The IRS determined an $18,000 deficiency on the Federal income tax.
The IRS claims that income tax after credits should be $48,000.
An accuracy-related penalty under section 6662(a) is also being proposed by the IRS.

1 Assume the IRS is correct. The payment of $63,500 is not deductible.
Is the understatement is substantial? Provide computation and citation.

An UNDERSTATEMENT is the excess of: (1) the amount of tax required to be shown on the tax return over (2) the amount of the tax which is shown on the return.	Sec. 6662(d)(2)
An understatement of tax is "substantial" if it exceeds the greater of: (1) 10% of the tax required to be shown on the return, or (2) $5,000.	Sec. 6662(d)(1)

Amount of tax required to be shown on the return		
Amount of tax shown on the return		
Excess		
Greater of 10% of tax of $48,000, or $5,000.		
Underpayment of tax is substantial, because it exceeds threshold.		Sec. 6662(d)(2)

2 How much penalty under Section 6662 will be proposed by the IRS?
Provide computation & citation.

Amount of underpayment		
Penalty rate of 20%		
Penalty amount		Sec. 6662(a)

3 Assume you prepared the return, and charged a $3,600 fee return preparation.
What is the amount of the penalty under Section 6694 that the IRS
may potentially assess against you, the preparer? Provide computation & citation.

Penalty is greater of:		
(1) $1,000, or		
(2) 50% of your fee for tax preparation		
Fee for preparing the return		
Amount equal to 50% of your fee		
Potential preparer penalty		
Section 6694(a)(1)		

4 Please identify some factors (or reasons) that may be presented by the taxpayer
to convince the IRS or the court that the Section 6662 penalty should
not be imposed. Provide citations.

1.	Sec. 6662(d)(2)(B)(i)
2.	Sec. 6662(d)(2)(B)(ii)
3.	Sec. 6664(c)(1)
Includes reliance on tax advice of a tax professional.	

Joseph Peery - Divorce and Alimony

During the tax year, Joseph Peery made total payments of $90,264 to Ms. Peery.
(Ms. Peery is Joseph's former wife.)
The payments were made in compliance with his divorce agreement with Ms. Peery.
Joseph claimed an alimony deduction in the amount of $90,264.
Joseph believes that all of the payments of $90,264 qualify as deductible alimony.
The tax return showed the amount of federal income tax after credits to be $30,000.
The IRS issued a notice of deficiency to the taxpayers.
The IRS seeks to disallow $63,500 of the deduction, claiming it is a property settlement.
The IRS determined an $18,000 deficiency on the Federal income tax.
The IRS claims that income tax after credits should be $48,000.
An accuracy-related penalty under section 6662(a) is also being proposed by the IRS.

1 Assume the IRS is correct. The payment of $63,500 is not deductible.
Is the understatement is substantial? Provide computation and citation.

An UNDERSTATEMENT is the excess of: (1) the amount of tax required to be shown on the tax return over (2) the amount of the tax which is shown on the return.		Sec. 6662(d)(2)
An understatement of tax is "substantial" if it exceeds the greater of: (1) 10% of the tax required to be shown on the return, or (2) $5,000.		Sec. 6662(d)(1)
Amount of tax required to be shown on the return	$48,000	
Amount of tax shown on the return	$30,000	
Excess	$18,000	
Greater of 10% of tax of $48,000, or $5,000.	$5,000	
Underpayment of tax is substantial, because it exceeds threshold.		Sec. 6662(d)(2)

2 How much penalty under Section 6662 will be proposed by the IRS?
Provide computation & citation.

Amount of underpayment	$18,000	
Penalty rate of 20%	20%	
Penalty amount	$3,600	Sec. 6662(a)

3 Assume you prepared the return, and charged a $3,600 fee return preparation.
What is the amount of the penalty under Section 6694 that the IRS
may potentially assess against you, the preparer? Provide computation & citation.

Penalty is greater of:		
(1) $1,000, or		$1,000
(2) 50% of your fee for tax preparation		
Fee for preparing the return	$3,600	
Amount equal to 50% of your fee		$1,800
Potential preparer penalty		$1,800
Section 6694(a)(1)		

4 Please identify some factors (or reasons) that may be presented by the taxpayer
to convince the IRS or the court that the Section 6662 penalty should
not be imposed. Provide citations.

1. Substantial authority	Sec. 6662(d)(2)(B)(i)
2. Adequate disclosure and reasonable basis	Sec. 6662(d)(2)(B)(ii)
3. Reasonable cause and taxpayer acted in good faith.	Sec. 6664(c)(1)
Includes reliance on tax advice of a tax professional.	

Sec. 6662. Imposition of Accuracy-Related Penalty on Underpayments.

(a) Imposition of Penalty. If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this **section applies.**

(b) Portion of Underpayment to Which Section Applies. This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(1) Negligence or disregard of rules or regulations.

(2) Any substantial understatement of income tax.

(3) Any substantial valuation misstatement under chapter 1.

(4) Any substantial overstatement of pension liabilities.

(5) Any substantial estate or gift tax valuation understatement.

(6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.

(7) Any undisclosed foreign financial asset understatement.

This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 6663. Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A.

(c) Negligence. For purposes of this section, the term “negligence” includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term “disregard” includes any careless, reckless, or intentional disregard.

(d) Substantial Understatement of Income Tax.

(1) Substantial understatement.

(A) In general. For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of-

(i) 10 percent of the tax required to be shown on the return for the taxable year, or

(ii) $5,000.

(B) Special rule for corporations. In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

(ii) $10,000,000.

(2) Understatement.

(A) In general. For purposes of paragraph (1), the term “understatement” means the excess of—

(i) the amount of the tax required to be shown on the return for the taxable year, over

(ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.

(B) Reduction for understatement due to position of taxpayer or disclosed item. The amount of the understatement under subparagraph (A) shall be reduced by that portion of the understatement which is attributable to—

(i) the tax treatment of any item by the taxpayer if there is or was **substantial authority** for such treatment, or

(ii) any item if-

(I) the relevant facts affecting the item's tax treatment are **adequately disclosed** in the return or in a statement attached to the return, and

(II) there is a **reasonable basis** for the tax treatment of such item by the taxpayer.

For purposes of clause (ii)(II), in no event shall a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation.

(C) Reduction not to apply to tax shelters.—

(i) In general. Subparagraph (B) shall not apply to any item attributable to a tax shelter.

(ii)Tax shelter. For purposes of clause (i), the term "tax shelter" means—

(I) a partnership or other entity,

(II) any investment plan or arrangement, or

(III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

Sec. 6694. Understatement of Taxpayer's Liability by Tax Return Preparer.

(a) Understatement Due to Unreasonable Positions.

(1) In general. - If a tax return preparer-

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim in an amount equal to the **greater of $1,000 or 50 percent** of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Unreasonable position.

(A) In general. - Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was **substantial authority** for the position.

(B) Disclosed positions. - If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a **reasonable basis** for the position.

(C) Tax shelters and reportable transactions. - If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) Reasonable cause exception. - No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

(b) Understatement Due to Willful or Reckless Conduct.

(1) In general. Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a conduct described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of—

(A) $5,000, or

(B) 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Willful or reckless conduct. Conduct described in this paragraph is conduct by the tax return preparer which is—

(A) a willful attempt in any manner to understate the liability for tax on the return or claim, or

(B) a reckless or intentional disregard of rules or regulations.

(3) Reduction in penalty. The amount of any penalty payable by any person by reason of this subsection for any return or claim for refund shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).

(e) Understatement of Liability Defined. For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed by this title or any overstatement of the net amount creditable or refundable with respect to any such tax. Except as otherwise provided in subsection (d), the determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.