Caution: *DRAFT—NOT FOR FILING*

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information as a courtesy. **Do not file draft forms.** Also, do not rely on draft instructions and publications for filing. We generally do not release drafts of forms until we believe we have incorporated all changes. However, in some cases unexpected issues arise, or legislation is passed, necessitating a change to a draft form we have posted on IRS.gov. Also, forms generally are subject to OMB approval before they are officially released. Drafts of instructions and publications are usually subject to at least some changes before being officially released.

All early releases of draft forms, instructions, and publications are available at www.IRS.gov/draftforms. All information about forms, instructions, and publications is accessible from www.IRS.gov/formspubs.

If you have any comments on this draft, you can email us at taxforms@irs.gov or submit them to us on our IRS.gov page titled Comment on Forms and Publications. Please include the form or publication number in the subject. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each suggestion. Please note that we may not be able to consider many suggestions until the subsequent revision.

Instructions for Form 8275-R

(Rev. August 2013)

Regulation Disclosure Statement

Department of the Treasury
Internal Revenue Service

DRAFT AS OF May 17, 2013

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

What's New

In the filer identification section, additional lines have been added to request the name, employer identification number (if any), and reference ID number of any foreign entity for which the taxpayer is making a disclosure on Form 8275-R.

Future developments. For the latest information about developments related to Form 8275-R and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8275*.

General Instructions

Purpose of Form

Form 8275-R is used by taxpayers and tax return 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 tax understatements due to positions taken contrary to regulations and the economic substance penalty.

CAUTION *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 on a tax shelter item.*
- *Any substantial valuation misstatement under chapter 1.*
- *Any substantial overstatement of pension liabilities.*
- *Any substantial estate or gift tax valuation understatements.*
- *Any claim of tax benefits from a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.*
- *Any otherwise undisclosed foreign financial asset understatement.*

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 can 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 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.) can 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)(1) 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.

To make adequate disclosure for a position or positions related to more than one foreign entity, you must complete and file a separate Form 8275-R for each foreign 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 as indicated in Regulations section 1.6011-4(d). See Form 8886, Reportable Transaction Disclosure Statement, its instructions, Notice 2006-6, 2006-5 I.R.B. 385, available at *http://www.irs.gov/irb/2006-05_IRB/ar10.html*, and Notice 2010-62, 2010-40 I.R.B. 411, available at *www.irs.gov/irb/2010-40_IRB/ar09.html*.

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,

5. Any substantial estate or gift tax valuation understatement, or

6. Any claim of tax benefits from a transaction lacking economic substance, as defined by section 7701(o), or failing to meet the requirements of any similar rule of law.

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. The penalty also increases to 40% for failing to adequately disclose a transaction that lacks economic substance in (6) above. See *Economic Substance* on this page. The penalty is 40% of any portion of an underpayment that is attributable to any undisclosed foreign financial asset understatement.

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.

CAUTION *The reasonable cause and good faith exception does not apply to any portion of an underpayment attributable to a transaction that lacks economic substance under section 7701(o).*

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.

An understatement of a corporation (other than an S corporation or a personal holding company, as defined in section 542) is substantial if it exceeds in any year 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.

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 6662(d) and Regulations section 1.6664-4.

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.

Economic substance. To satisfy the disclosure requirements under section 6662(i), you may adequately disclose with a timely filed original return (determined with regard to extensions) or a qualified amended return (as defined under Regulations section 1.6664-2(c)(3)) the relevant facts affecting the tax treatment of the transaction.

Note. If you filed a Schedule UTP, you may not need to file Form 8275-R to satisfy the disclosure requirements of section 6662(i). See the Instructions for Schedule UTP.

Tax Return Preparer Penalties

A preparer who files a return or claim for refund is subject to a penalty 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, for taking a position which the preparer knew or reasonably should have known would understate any part of the liability if:

- There is or was no substantial authority for the position.
- The position is a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies and it was not reasonable to believe that the position would more likely than not be sustained on its merits.
- The position disclosed as provided in section 6662(d)(2)(B)(ii), is not a tax shelter or a reportable transaction to which section 6662A applies, and

DRAFT AS OF May 17, 2013

there was no reasonable basis for the position.

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 penalty equal to the greater of $5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim. This penalty shall be reduced by the amount of the penalty paid by such person for taking an unreasonable position, or a position with no reasonable basis, as described immediately above.

A preparer is not considered to have recklessly or intentionally disregarded a rule if a position is adequately disclosed and has a reasonable basis.

Note. For more information about the accuracy-related penalty and preparer penalties, and the means of avoiding these penalties, see the regulations under sections 6662, 6664, and 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.

Reference ID number. If you are filing Form 8275-R to disclose a position related to a foreign entity for which an information return (such as Form 5471) is filed, enter on Form 8275-R the same reference ID number for the foreign entity that is entered on the information return.

If you are filing Form 8275-R to report a position or positions related to multiple foreign entities, file a separate Form 8275-R for each foreign entity.

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 can 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 can include a description of the legal issues presented by the facts, and

2. A statement explaining why you believe this regulation to be invalid.

CAUTION *Unless provided otherwise in the* General Instructions *above, your 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

DRAFT AS OF May 17, 2013

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.

DRAFT AS OF
May 17, 2013