From:
Sent: Wednesday, November 07, 2012 5:16:58 PM
To:
Cc:
Subject: Overstated Withholding and Penalties

asked me to respond to your question.

Under §1.6664-2(c)(1)(i), overstated withholding may result in an underpayment subject to section 6662 or 6663, even without a deficiency. There may not be a deficiency because, unlike underpayments, deficiencies are determined without regard to section 31 credits. Using facts from your example:

W ("Amount of income tax imposed") = 3,000 (per 1.6664-2(b))
X ("Amount shown as the tax by the tax payer on his return") = 3,000 (the amount shown as the tax by the taxpayer on his return) - (8,000 "the amounts shown by the taxpayer on his return as credits for tax withheld under section 31" - 0 "the amounts actually withheld")= -5,000 per 1.6664-2(c)(1)

Y ("Amounts not so shown previously assessed") = none per 1.6664-2(d)
Z ("the amount of rebates made") = none per 1.6664-2(e)

Underpayment = 3,000 - (-5,000 + 0 - 0) =$8,000

Please contact me if you have any further questions.