

October 20, 2022

Ms. Holly Paz  
Commissioner  
LB&I Division  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20044

Ms. Jennifer Best  
Deputy Commissioner  
LB&I Division  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20044

**RE: Clarifying the Relationship Between Schedule UTP and Forms 8275 and 8275-R**

Dear Ms. Paz and Ms. Best:

Thank you for the opportunity to comment on the new draft Schedule UTP, “Uncertain Tax Position Statement,” and its instructions.<sup>1</sup> This comment requests clarification regarding how disclosure on Schedule UTP interplays with the penalty for disregarding rules or regulations.

**I. Schedule UTP and the Penalty for Disregard of Rules or Regulations**

In relevant part, section 6662(b)(1)<sup>2</sup> penalizes underpayments attributable to “disregard of rules or regulations.”

---

<sup>1</sup> IRS Statement about Uncertain Tax Positions (UTP) Reporting (Oct. 11, 2022), *available at*: <https://www.irs.gov/newsroom/irs-statement-about-uncertain-tax-positions-utp-reporting> (last accessed Oct. 20, 2022).

<sup>2</sup> All section references herein are to the Internal Revenue Code of 1986, as amended, and all regulation references are to the final or temporary regulations promulgated thereunder.

Regulations under section 6662 exempt adequately disclosed positions from the penalty. Relief requires that “the statutory or regulatory provision or ruling in question must be adequately identified [by the taxpayer] on the Form 8275 or 8275-R, as appropriate.”<sup>3</sup>

Given that information provided on Form 8275 or 8275-R sometimes must also be disclosed on Schedule UTP, the Internal Revenue Manual sensibly provides that:

The penalty for disregard of rules or regulations does not apply if the taxpayer adequately discloses the position on Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, (as appropriate). If a taxpayer is required to file a Schedule UTP, (Form 1120), Uncertain Tax Position Statement, for a taxable year, a complete and accurate Schedule UTP that discloses a tax position attached to a return or a qualified amended return will be treated as a Form 8275 or Form 8275-R regarding the tax position.<sup>4</sup>

The instructions for Schedule UTP similarly state that:

A complete and accurate disclosure of a tax position on the appropriate year’s Schedule UTP will be treated as if the corporation filed a Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, regarding the tax position. Form 8275 or Form 8275-R need not be filed to avoid certain accuracy-related penalties with respect to that tax position.<sup>5</sup>

Section 3.08 of Rev. Proc. 2021-52 (and its predecessors) apparently supports the Internal Revenue Manual and instructions to Schedule UTP:

A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP, Uncertain Tax Position Statement, will be treated as if the corporation filed a Form 8275 or Form 8275-R regarding the tax position.

However, the scope of Rev. Proc. 2021-52 (and its predecessors) is limited:

This revenue procedure does not apply with respect to any other penalty provisions (including but not limited to the disregard provisions of the section 6662(b)(1) accuracy-related penalty . . .).<sup>6</sup>

Unfortunately, no other material in the regulations or Internal Revenue Bulletin appears to reflect the practical approach of the Internal Revenue Manual and Schedule UTP instructions.

---

<sup>3</sup> Treas. Reg. § 1.6662-3(c)(2).

<sup>4</sup> IRM § 20.1.5.8.2.1(1).

<sup>5</sup> *Id.* Draft Instructions for Schedule UTP (Form 1120) (Rev. December 2022), p. 4.

<sup>6</sup> Rev. Proc. 2021-52 § 1.

## II. Request for Clarification

If the Service intends disclosure on Schedule UTP to be treated as disclosure on Form 8275 or 8575-R for purposes of the penalty for disregard of rules or regulations, then it would be helpful for the Service to publish a statement to that effect in a revenue procedure or other item in the Internal Revenue Bulletin.

Conversely, if the Service's position is that disclosure on Schedule UTP does *not* suffice for purposes of the disregard of rules or regulations penalty, then it would be helpful for the instructions to Schedule UTP to be modified to make that clear for taxpayers.

Treating Schedule UTP disclosure as disclosure on Form 8275 or 8275-R for purposes of the disregard of rules or regulations penalty under section 6662(b)(1) is strongly preferable, as it reduces needless effort on the part of taxpayers and the government alike. But in either case, taxpayers would benefit from greater clarity as to the effectiveness of Schedule UTP disclosure for purposes of this penalty.

\* \* \* \* \*

Thank you for the opportunity to share these comments.

Respectfully submitted,



Jonathan L. Holbrook

*Ivins, Phillips & Barker, Chartered*