***Estate of Trompeter v. Commissioner, 111 T. C. 57 (1998)***

An estate's underpayment for fraud penalty purposes includes all deductible expenses, even those incurred after filing the estate tax return.

**Summary**

The Estate of Trompeter case addressed whether post-return expenses, like legal fees and interest, could reduce an estate's underpayment for calculating the fraud penalty under IRC section 6663(a). The estate argued these expenses should be deductible, while the Commissioner contended only expenses on the filed return should count. The Tax Court ruled that all deductible expenses, regardless of when incurred, must be considered in determining the underpayment. This decision highlights the distinction between estate tax calculations, which consider expenses incurred after filing, and income tax NOL carrybacks, which do not reduce fraud penalties based on future events.

**Facts**

Emanuel Trompeter's estate was found to have fraudulently underreported its taxable estate. The estate tax return was filed, but the estate incurred additional expenses post-filing, including legal fees and interest on the deficiency. These expenses were not reported on the original return. The estate argued that these expenses should be deductible in calculating the underpayment for the fraud penalty under IRC section 6663(a), while the Commissioner argued that only expenses reported on the return should be considered.

**Procedural History**

The Tax Court initially found the estate liable for fraud in Estate of Trompeter v. Commissioner, T. C. Memo 1998-35. This supplemental opinion was issued to address the computation of the fraud penalty based on Rule 155, specifically whether post-return expenses could be deducted from the underpayment.

**Issue(s)**

1. Whether an estate's underpayment for purposes of computing the fraud penalty under IRC section 6663(a) should include all deductible expenses, including those incurred after the filing of the estate tax return?

**Holding**

1. Yes, because the term "underpayment" under IRC section 6664(a) refers to the tax imposed on the estate, which is determined after considering all allowable deductions, including those incurred post-filing.

**Court's Reasoning**

The court distinguished between the estate tax and income tax contexts. Unlike income tax, where NOL carrybacks from future years do not reduce fraud penalties based on prior years' returns, estate tax is a one-time charge calculated based on the final value of the estate, which can include expenses incurred after filing the return. The court interpreted "tax required to be shown on a return" in IRC section 6663(a) as a classification of the type of tax, not a temporal limitation. The court also noted that disallowing post-return expenses could lead to the imposition of a fraud penalty even when no underpayment exists, which is inconsistent with the purpose of the penalty. The majority opinion was supported by several concurring opinions, while the dissent argued that the fraud penalty should be based on the tax required to be shown on the return at the time of filing, excluding post-return expenses.

**Practical Implications**

This decision impacts how estates calculate underpayments for fraud penalties, allowing them to include all deductible expenses, even those incurred after filing the return. This ruling may encourage estates to contest deficiencies and penalties more vigorously, knowing that related expenses can reduce the penalty base. Practitioners should consider this ruling when advising estates on potential fraud penalties, ensuring all deductible expenses are accounted for. The decision also highlights a distinction between estate and income tax fraud penalty calculations, which may influence future legislative or judicial developments in this area. Subsequent cases may reference Trompeter when addressing the deductibility of post-return expenses in other tax contexts.

 