

Return Preparer Penalties

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General Field Examination Procedures

- During every field or office examination, examiners must determine if any potential penalties are applicable including preparer penalties
- During the client examination process, examiners gather written evidence and oral testimony to make the initial return preparer penalty determination
- After the audit is complete, when appropriate, examiners will open a separate penalty investigation, to contact the preparer for additional information to determine if penalties apply

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Proposal, Assessment, and Appeal Procedures

- If the examiner determines a penalty applies:
 - a detailed report is prepared
 - the preparer is provided with a copy
- The preparer has 30 days to request an appeal before the penalty is assessed.
- For IRC section 6700 and 6701 penalties, the penalty is assessed and the preparer must part pay and file a claim if they do not agree.

Additional Actions for Circular 230 Practitioners

Potential Referrals to the Office of Professional Responsibility (OPR):

- IRC sections 6695(f), 6700, and 6701
- IRC sections 6694(a) and (b)
- IRC sections 7407 and 7408
- IRC section 6701(a) asserted against appraisers

Additional Actions for Unenrolled Return Preparers

- Unenrolled return preparers' limited representation privileges may be suspended under Revenue Procedure 81-38.
- Unenrolled return preparers' limited representation privileges may be revoked by Examination Area Directors.

Program Action Cases

- A Program Action Case is opened when a preparer's misconduct:
 - appears to be pervasive and
 - extends to multiple taxpayers
- A Return Preparer Coordinator will:
 - monitor the examinations of the preparer's clients and assessment of return preparer penalties
 - initiate an injunction investigation, if applicable

Small Business and Work Opportunity Tax Act of 2007

- SBWOTA Section 6694
 - Notice 2007-54 transition relief
 - Notice 2008-11 clarification of transition relief
 - Notice 2008-13 guidance on the new standards
 - Notice 2008-46 further implementation guidance
- SBWOTA Section 6695
 - Notice 2008-12 guidance for tax return preparer signature requirements

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Legislative Changes

- Extended the application of the income tax return preparer penalties to preparers of returns for:
 - employment tax
 - estate and gift tax
 - excise tax
 - exempt organizations
- Elevated the standards of conduct that must be met by tax return preparers
- Increased the penalty amounts for understatements due to unreasonable positions and willful or reckless conduct

IRC Section 6694 (a)

	Prior to the Act	After the Act
Section 6694(a) applies if:	<ol style="list-style-type: none"> 1) There was an <u>understatement</u> 2) There was not a <u>realistic possibility</u> (i.e. one in three chance) that the position would be sustained on its merits 3) The preparer for the income tax return <u>knew</u> (or <u>reasonably should have known</u>) of the position, AND 4) The position was <u>not disclosed</u> or was <u>frivolous</u> 	<ol style="list-style-type: none"> 1) There was an <u>understatement</u> 2) There was not a reasonable belief that the position would <u>more likely than not</u> (i.e. greater than 50% chance) be sustained on its merits, 3) The tax return preparer <u>knew</u> (or <u>reasonably should have known</u>) of the position, AND 4) The position was <u>not disclosed</u> or there was no <u>reasonable basis</u> for it
6694(a) Penalty	\$250	Greater of \$1,000 or 50% of the income derived by the preparer

IRC Section 6694(b)

	Prior to the Act	After the Act
Section 6694(b) applies if:	<ol style="list-style-type: none">1) There was an <u>understatement</u>2) Any part of the understatement was due to a <u>willful</u> attempt by an income tax return preparer OR3) <u>Reckless or intentional disregard</u> of rules or regulations by an income tax return preparer	Standard of conduct remains the same
6694(b) Penalty	\$1,000	Greater of \$5,000 or 50% of the income derived

IRC Section 6695

- SBWOTA made the following changes to the other assessable penalties with respect to the preparation of tax returns for other persons:
 - Removed the word income from the heading of IRC Section 6695
 - Replaced references to “an income tax return preparer” each place it appears in IRC Section 6695 with “a tax return preparer”
- Implementation of the signature requirements

More Information on IRS.gov

- Small Business Tax Workshop DVD
- Small Business Resource Guide CD-ROM
- Tax Talk Today
- e-News for Tax Professionals
- e-News for Small Businesses
- IRS Phone Forums

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