

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Notice 2009-7, page 312.

This notice designates a transaction of interest and disclosure requirements when a domestic partnership is used to prevent the inclusion of subpart F income.

Rev. Proc. 2009-12, page 321.

This procedure provides the maximum vehicle values for use with the special valuation rules under regulations sections 1.61-21(d) and (e) in 2009. These values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index.

EMPLOYMENT TAX

Rev. Proc. 2009-13, page 323.

This document sets forth the procedures for employers to follow to request to receive notification of their qualification to file Forms 944, *Employer's ANNUAL Federal Tax Return*. It also sets forth the procedures for employers, who were notified that they should file Form 944, who wish to request to file Forms 941, *Employer's QUARTERLY Federal Tax Return*, instead for tax year 2009.

EXCISE TAX

Notice 2009-6, page 311.

This notice provides a temporary safe harbor and a transitional rule to implement a statutory change in the amount of

denaturant that will be considered as "alcohol" for purposes of certain alcohol fuel credits.

ADMINISTRATIVE

T.D. 9436, page 268.

Final regulations under sections 6694 and 6695 of the Code and the related definitional provisions, implement the modifications to the tax return preparer penalties as amended by the Small Business and Work Opportunity Tax Act of 2007 and the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. Notices 2007-54, 2008-11, 2008-12, 2008-13, and 2008-46 obsoleted.

Notice 2009-5, page 309.

This notice provides interim guidance regarding implementation of the tax return preparer penalty under section 6694(a) of the Code as amended by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. Notice 2008-13 modified and clarified.

Rev. Proc. 2009-11, page 313.

This procedure describes the returns and claims for refund that are subject to the penalties for understatement of a taxpayer's liability by a tax return preparer under section 6694 of the Code and for the tax return preparer's failure to sign the return or claim for refund under section 6695(b). Notices 2008-12 and 2008-46 obsoleted. Notice 2008-13, list of forms, modified and superseded.

(Continued on the next page)

Finding Lists begin on page ii.



Rev. Proc. 2009-12, page 321.

This procedure provides the maximum vehicle values for use with the special valuation rules under regulations sections 1.61-21(d) and (e) in 2009. These values are indexed for inflation and must be adjusted annually by referring to the Consumer Price Index.

Rev. Proc. 2009-14, page 324.

This procedure, which supersedes Rev. Proc. 2007-17, 2007-4 I.R.B. 368, provides guidance that makes the existing Pre-Filing Agreement (PFA) program permanent. Rev. Proc. 2007-17 superseded.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are compiled semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 6011.—General Requirement of Return, Statement, or List

A revenue procedure sets forth the procedures for employers to follow to request to receive notification of their qualification to file Forms 944, *Employer's ANNUAL Federal Tax Return*, and also sets forth the procedures for employers who were notified that they should file Form 944, *Employer's ANNUAL Federal Tax Return*, who wish to request to file Forms 941, *Employer's QUARTERLY Federal Tax Return*, instead for tax year 2009. See Rev. Proc. 2009-13, page 323.

Section 6302.—Mode or Time of Collection

A revenue procedure sets forth the procedures for employers to follow to request to receive notification of their qualification to file Forms 944, *Employer's ANNUAL Federal Tax Return*, and also sets forth the procedures for employers who were notified that they should file Form 944, *Employer's ANNUAL Federal Tax Return*, who wish to request to file Forms 941, *Employer's QUARTERLY Federal Tax Return*, instead for tax year 2009. See Rev. Proc. 2009-13, page 323.

Section 6694.—Understatement of Taxpayer's Liability by Tax Return Preparer

26 CFR 1.6694-1: Section 6694 penalties applicable to tax return preparers.

26 CFR 1.6695-1: Other assessable penalties with respect to the preparation of tax returns for other persons.

T.D. 9436

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, 301, and 602

Tax Return Preparer Penalties Under Sections 6694 and 6695

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code (Code) and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The final regulations affect tax return preparers and provide guidance regarding the amended provisions.

DATES: *Effective Date:* These regulations are effective on December 22, 2008.

Applicability Date: For dates of applicability, see §§ 1.6060-1(d), 1.6107-1(e), 1.6109-2(d), 1.6694-1(g), 1.6694-2(f), 1.6694-3(g), 1.6694-4(d), 1.6695-1(g), 1.6695-2(d), 1.6696-1(k), 20.6060-1(b), 20.6107-1(b), 20.6109-1(b), 20.6694-1(b), 20.6694-2(b), 20.6694-3(b), 20.6694-4(b), 20.6695-1(b), 20.6696-1(b), 20.7701-1(b), 25.6060-1(b), 25.6107-1(b), 25.6109-1(b), 25.6694-1(b), 25.6694-2(b), 25.6694-3(b), 25.6694-4(b), 25.6695-1(b), 25.6696-1(b), 25.7701-1(b), 26.6060-1(b), 26.6107-1(b), 26.6109-1(b), 26.6694-1(b), 26.6694-2(b), 26.6694-3(b), 26.6694-4(b), 26.6695-1(b), 26.6696-1(b), 26.7701-1(b), 31.6060-1(b), 31.6107-1(b), 31.6109-2(b), 31.6694-1(b), 31.6694-2(b), 31.6694-3(b), 31.6694-4(b), 31.6695-1(b), 31.6696-1(b), 31.7701-1(b), 40.6060-1(b), 40.6107-1(b), 40.6109-1(b), 40.6694-1(b), 40.6694-2(b), 40.6694-3(b), 40.6694-4(b), 40.6695-1(b), 40.6696-1(b), 40.7701-1(b), 41.6060-1(b), 41.6107-1(b), 41.6109-2(b), 41.6694-1(b), 41.6694-2(b), 41.6694-3(b), 41.6694-4(b), 41.6695-1(b), 41.6696-1(b), 41.7701-1(b), 44.6060-1(b), 44.6107-1(b), 44.6109-1(b), 44.6694-1(b), 44.6694-2(b), 44.6694-3(b), 44.6694-4(b), 44.6695-1(b), 44.6696-1(b), 44.7701-1(b), 53.6060-1(b), 53.6107-1(b), 53.6109-1(b), 53.6694-1(b), 53.6694-2(b), 53.6694-3(b), 53.6694-4(b), 53.6695-1(b), 53.6696-1(b), 53.7701-1(b), 54.6060-1(b),

54.6107-1(b), 54.6109-1(b), 54.6694-1(b), 54.6694-2(b), 54.6694-3(b), 54.6694-4(b), 54.6695-1(b), 54.6696-1(b), 54.7701-1(b), 55.6060-1(b), 55.6107-1(b), 55.6109-1(b), 55.6694-1(b), 55.6694-2(b), 55.6694-3(b), 55.6694-4(b), 55.6695-1(b), 55.6696-1(b), 55.7701-1(b), 56.6060-1(b), 56.6107-1(b), 56.6109-1(b), 56.6694-1(b), 56.6694-2(b), 56.6694-3(b), 56.6694-4(b), 56.6695-1(b), 56.6696-1(b), 56.7701-1(b), 156.6060-1(b), 156.6107-1(b), 156.6109-1(b), 156.6694-1(b), 156.6694-2(b), 156.6694-3(b), 156.6694-4(b), 156.6695-1(b), 156.6696-1(b), 156.7701-1(b), and 301.7701-15(g).

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622-4910, and Matthew S. Cooper, (202) 622-4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1231. The collections of information in this final regulation are in §§ 1.6060-1(a)(1), 1.6107-1, 1.6694-2(d)(3), 20.6060-1(a)(1), 20.6107-1, 25.6060-1(a)(1), 25.6107-1, 26.6060-1(a)(1), 26.6107-1, 31.6060-1(a)(1), 31.6107-1, 40.6060-1(a)(1), 40.6107-1, 41.6060-1(a)(1), 41.6107-1, 44.6060-1(a)(1), 44.6107-1, 53.6060-1(a)(1), 53.6107-1, 54.6060-1(a)(1), 54.6107-1, 55.6060-1(a)(1), 55.6107-1, 56.6060-1(a)(1), 56.6107-1, 156.6060-1(a)(1), 156.6107-1, 157.6060-1(a)(1), and 157.6107-1. This information is necessary to make the record of the name, taxpayer identification number, and principal place of work of each tax return preparer, make each return or claim for refund prepared available

for inspection by the Commissioner of Internal Revenue, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under section 6694. The collection of information is required to comply with the provisions of section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The likely respondents are tax return preparers and their employers.

Estimated total annual reporting burden: 10,679,320 hours.

Estimated average annual burden per respondent: 15.6 hours.

Estimated number of respondents: 684,268.

Estimated frequency of responses: 127,801,426.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1), the Estate Tax Regulations (26 CFR part 20), the Gift Tax Regulations (26 CFR part 25), the Generation-Skipping Transfer Tax Regulations (26 CFR part 26), the Employment Tax and Collection of Income Tax at Source Regulations (26 CFR part 31), the Excise Tax Procedural Regulations (26 CFR part 40), the Highway Use Tax Regulations, (26 CFR part 41), the Wagering Tax Regulations (26 CFR part 44), the Foundation and Similar Excise Tax Regulations (26 CFR part 53), the Pension Excise Tax Regulations (26 CFR part 54), the Excise Tax on Real Estate Investment Trusts and Regulated Investment Companies Regulations (26 CFR part 55), the Public Charity Excise Tax Regulations (26 CFR part 56), the Excise Tax on Greenmail Regulations (26 CFR part 156), the Excise Tax on Structured Settlement Factoring Transactions Regulations (26 CFR part 157), and the Regulations on Procedure and Administration (26 CFR part 301)

implementing the amendments to tax return preparer penalties under sections 6694 and 6695 (and the related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36)) made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Title VIII-B of Public Law 110-28 (121 Stat. 190) (May 25, 2007) (the 2007 Act) and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Public Law 110-343 (122 Stat. 3765) (October 3, 2008) (the 2008 Act).

Section 8246 of the 2007 Act amended sections 6694 and 7701(a)(36) and made conforming changes to other Code provisions to make tax return preparer penalties applicable to a broader range of tax returns and claims for refund. The 2007 Act's amendments to section 6694 also changed the standards of conduct that tax return preparers must meet in order to avoid imposition of penalties in the event that a return prepared results in an understatement of tax. For undisclosed positions, the 2007 Act replaced the "realistic possibility" standard with a standard requiring the tax return preparer to have a "reasonable belief that the position would more likely than not be sustained on its merits." For disclosed positions, the 2007 Act replaced the "not-frivolous" standard with a standard requiring the tax return preparer to have a "reasonable basis" for the tax treatment of the position.

The 2007 Act also increased the first-tier penalty under section 6694(a) from \$250 to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim for refund with respect to which the penalty was imposed. In addition, the 2007 Act increased the second-tier penalty under section 6694(b) from \$1,000 to the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer. The amendments made by the 2007 Act were effective for tax returns prepared after the date of enactment, May 25, 2007.

The Treasury Department and the IRS released Notice 2008-13, 2008-3 I.R.B. 282, on December 31, 2007, to provide interim guidance under the 2007 Act. Additional guidance was simultaneously provided in Notice 2008-12, 2008-3 I.R.B. 280, with respect to the implementation of the tax return preparer signature require-

ment of section 6695(b), and in Notice 2008-11, 2008-3 I.R.B. 279, which clarified the earlier transition relief provided in Notice 2007-54, 2007-27 I.R.B. 12 (July 2, 2007). Notice 2008-46, 2008-18 I.R.B. 868, was released on April 16, 2008, to add certain returns and documents to Exhibits 1, 2, and 3 of Notice 2008-13.

On June 17, 2008, the Treasury Department and the IRS published in the **Federal Register** (73 FR 34560) proposed amendments to the regulations (REG-129243-07, 2008-27 I.R.B. 32) reflecting amendments made by the 2007 Act and comments received on the notices. A public hearing was held on these proposals on August 18, 2008. Written public comments responding to the proposed regulations were received.

On October 3, 2008, section 506 of the 2008 Act modified the standards of conduct that tax return preparers must meet in order to avoid imposition of the section 6694(a) penalty. Specifically, the 2008 Act changed the standard for undisclosed positions from "reasonable belief that the position more likely than not will be sustained on the merits" to "substantial authority for the position." The 2008 Act maintained the "reasonable basis" standard for disclosed positions. If a position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, it must be "reasonable to believe that the position more likely than not will be sustained on the merits." The amendments made by the 2008 Act are retroactively effective for tax returns prepared after May 25, 2007, except that the special rules applicable to positions with respect to tax shelters and reportable transactions to which section 6662A applies are effective for tax returns or claims for refund prepared for tax years ending after October 3, 2008, the date of enactment of the 2008 Act.

After consideration of the public comments and the amendments made by the 2008 Act, the proposed regulations are adopted as revised by this Treasury decision. Section 1.6694-2 of these final regulations does not provide substantive guidance reflecting amendments to the Code made by the 2008 Act. Rather, the Treasury Department and the IRS are reserving §1.6694-2(c) in these final regulations and are simultaneously issuing

a notice in the Internal Revenue Bulletin providing interim guidance on the amendments to the Code made by the 2008 Act. With these final regulations, the Treasury Department and the IRS are also simultaneously issuing a revenue procedure in the Internal Revenue Bulletin that specifically identifies the returns and claims for refund subject to penalty under sections 6694 and 6695.

Summary of Comments and Explanation of Revisions

Over 30 written comments were received in response to the notice of proposed rulemaking. All comments were considered and are available for public inspection upon request. A number of these comments are summarized in this preamble. The changes included in these final regulations are discussed in order of the Code sections to which they relate.

In accordance with the 2007 Act, these final regulations amend existing regulations defining tax return preparers, which were previously limited to income tax return preparers, to broaden the scope of that definition to include preparers of estate, gift, and generation-skipping transfer tax returns, employment tax returns, excise tax returns, and returns of exempt organizations. These final regulations also revise current regulations to amend the standards of conduct that must be met to avoid imposition of the tax return preparer penalty under section 6694. In addition, these final regulations reflect changes to the computation of the section 6694 tax return preparer penalty made by the 2007 Act. These final regulations also amend current regulations under the penalty provisions of section 6695 to conform them with changes made by the 2007 Act expanding the scope of that statute beyond income tax returns. These final regulations are applicable to returns and claims for refund filed (and advice given) after December 31, 2008.

Furnishing of Copy of the Tax Return and Retaining Copy

The final regulations adopt the proposed amendments to §1.6107-1 regarding the requirement of a signing tax return preparer to furnish a copy of the completed tax return to the taxpayer and also to retain a copy, with modification.

One commentator requested that the final regulations make clear that a tax return preparer may provide copies of tax returns to taxpayers in either hard copy or electronic formats. The Treasury Department and the IRS recognize that because many returns are prepared and filed electronically and consist of electronic data, it may be unclear what is an acceptable copy of a return that must be furnished to the taxpayer. Upon further consideration, the Treasury Department and the IRS agree that clarification is necessary. Under §1.6107-1(a) of the final regulations, the tax return preparer must provide a complete copy of the return filed with the IRS to the taxpayer in any medium, including electronic, that is acceptable to both the taxpayer and the return preparer. In the case of an electronically-filed return, a complete copy of a taxpayer's return consists of the electronic portion of the return, including all schedules, forms, pdf attachments, and jurats, that was filed with the IRS. The copy provided to the taxpayer must include all information submitted to the IRS to enable the taxpayer to determine which schedules, forms, electronic files, and other supporting materials have been filed with the return. The copy, however, need not contain the identification number of the tax return preparer. The electronic portion of the return can be contained on a replica of an official form or on an unofficial form. On an unofficial form, however, data entries must reference the line numbers or descriptions on an official form.

The same commentator requested that the final regulations specifically provide that the copy of the tax return retained by tax return preparers may be retained electronically. The Treasury Department and the IRS, however, have concluded that revising the existing regulations to include this rule is not necessary. Existing revenue procedures address the maintenance of business records through use of electronic storage systems. See, for example, Rev. Proc. 97-22, 1997-1 C.B. 652. Tax return preparers may retain copies of tax returns in accordance with existing revenue procedures to comply with the final regulations.

Another commentator agreed with the general approach taken in §1.6107-1(c) but suggested clarification of the language regarding who is a signing tax return preparer for purposes of the section 6107

requirements. Upon consideration, the Treasury Department and the IRS agree that there is a potential for the proposed language to be misconstrued. Section 1.6107-1(c) of the final regulations clarifies that for purposes of complying with the requirements of section 6107, a corporation, partnership or other organization that employs a signing tax return preparer to prepare for compensation (or in which a signing tax return preparer is compensated as a partner or member to prepare) a return of tax or claim for refund shall be treated as the sole signing tax return preparer.

Furnishing Identification Number

A commentator requested that the final regulations clarify whether the tax return preparer's identifying number must be included on the taxpayer's copy of the tax return as well as on the copy filed with the IRS. Section 6109(a)(4) provides that any return or claim for refund prepared by a tax return preparer shall bear an identification number for securing proper identification of the tax return preparer, his employer, or both as may be prescribed. Upon further consideration, the Treasury Department and the IRS agree that for identification purposes, it is only important for the tax return preparer identification number to be included on the return that is filed with the IRS. Section 1.6109-2(a) of the final regulations, therefore, is amended to provide that each filed return or claim for refund containing the identification number of the tax return preparer required to sign the return (and the identification number of the person who has an employment arrangement or association with the individual tax return preparer, if applicable) will meet the needs of the IRS. This modification will assist in maintaining the privacy of the tax return preparer's information. Additional guidance may be provided in the future regarding tax return preparer identification numbers under section 6109.

Defining the Preparer Within a Firm

The final regulations adopt the proposed amendments to §1.6694-1(b)(1), with modification. Accordingly, the final regulations maintain a framework defining a "preparer per position within a firm", with the focus of any penalty on the position(s) giving rise to the understatement

on the return or claim for refund and any responsible parties with respect to such position(s).

Under this framework, an individual is a tax return preparer subject to section 6694 if the individual is primarily responsible for the position on the return or claim for refund giving rise to the understatement. Under §1.6694-1(b)(1), only one person within a firm will be considered primarily responsible for each position giving rise to an understatement and, accordingly, be subject to the penalty.

Three commentators questioned whether this framework will lead to significant problems in return preparer firms, in particular whether the framework may discourage any particular person within the firm from looking at the return in whole. These commentators also questioned whether the IRS will be able to identify the responsible party if individuals at the firm attempt to identify others at the firm who may be more responsible for the position. Two other commentators, however, agreed with this framework in light of the high level of specialization that exists in modern tax practice. The Treasury Department and the IRS continue to conclude that the expansion from a “one preparer per firm” to a “one preparer per position within a firm” will further compliance and will result in more equitable administration of the tax return preparer penalty regime. This framework, therefore, is adopted in the final regulations.

Section 1.6694-1(b)(2) of the proposed regulations provided that the individual who signs the return or claim for refund as the tax return preparer generally will be considered the person within a firm who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement. This language is finalized as proposed except for some minor conforming changes.

Proposed §1.6694-1(b)(3) established a similar rule for situations when there are one or more nonsigning tax return preparers at the same firm and either no signing tax return preparer within the firm, it is concluded that the signer is not primarily responsible for the position, or the IRS cannot conclude which individual is primarily responsible for the position for purposes of section 6694. In these situations, the proposed regulations stated that the individual within the firm with overall su-

pervisory responsibility for the position(s) giving rise to the understatement is the tax return preparer who is primarily responsible for the position for purposes of section 6694.

Several commentators requested that this rule for nonsigning tax return preparers not be adopted as proposed because it will lead to more harm than good. Specifically, one commentator requested the deletion of the clause “or the IRS cannot conclude which individual (as between the signing tax return preparer and other persons within the firm) is primarily responsible for the position” from proposed §1.6694-1(b)(3) because a tax return preparer penalty is not appropriate when the IRS is not able to reach a conclusion as to who is primarily responsible for the conduct giving rise to the position. The other commentator recommended qualifying the rule in proposed §1.6694-1(b)(3) with the requirement that the individual with overall supervisory responsibility for the position either possess actual knowledge of the position or fail to exercise appropriate diligence in the review of the position subject to penalty through willfulness, recklessness, or gross indifference.

Upon consideration of these comments, the Treasury Department and the IRS have revised §1.6694-1(b)(3) to provide that if there is no signing tax return preparer for the return or claim for refund within that firm or if, after the application of §1.6694-1(b)(2), it is concluded that the signing tax return preparer is not primarily responsible for the position, the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement generally will be considered the tax return preparer who is primarily responsible for the position for purposes of section 6694. Based upon credible information from any source, however, it may be concluded that another nonsigning tax return preparer within the firm is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement.

In response to the commentators’ concerns that the default rule in proposed §1.6694-1(b)(3) assigning liability for the penalty to the nonsigning tax return preparer may lead to more harm than good, §1.6694-1(b)(4) of the final regulations is added. The final regulations

in §1.6694-1(b)(4) provide that, if the information presented would support a finding that either the signing tax return preparer or a nonsigning tax return preparer within a firm is primarily responsible for the position(s) giving rise to the understatement, the IRS may assess the penalty against either one of the individuals within the firm, but not both, as the primarily responsible tax return preparer. This determination will be based upon all the evidence presented and will allow for certainty regarding the identification of the primarily responsible tax return preparer within the expiration of the period of limitations on making an assessment under section 6694(a). It is expected that the IRS will assess the penalty under section 6694 under these rules against the tax return preparer with the greatest amount of responsibility for the position based upon the best information available to the IRS. The rule adopted in §1.6694-1(b)(4) is not a rule reflecting joint and several liability for the penalty among the signing tax return preparer and nonsigning tax return preparer as the penalty may be assessed against one of these individuals, but not both.

Reliance on Information Provided

The final regulations adopt the proposed amendments to §1.6694-1(e), with modification. Most commentators supported expanding the regulations in §1.6694-1(e) to provide that a tax return preparer may rely in good faith and without verification on information furnished by another advisor, another tax return preparer, or other party (even if the advisor or tax return preparer is within the tax return preparer’s same firm) as long as the tax return preparer does not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer, and makes reasonable inquiries if the information as furnished appears to be incorrect or incomplete.

Commentators, however, requested that the final regulations clarify that a tax return preparer may rely on “advice” furnished by another advisor, another tax return preparer, or other party (even if the advisor or tax return preparer is within the tax return preparer’s same firm.) This recommendation is adopted in §1.6694-1(e)(1) of the final regulations. The same changes

are made for conformity to the definitions of “reasonable to believe that the position would more likely than not be sustained on its merits” in §1.6694-2(b)(1), “reasonable basis” in §1.6694-2(d)(2) and “reasonable cause” in §1.6694-2(e)(5). These modifications are consistent with the intent of the rules in the proposed regulations regarding reliance given the heightened standards imposed on tax return preparers by the 2007 and 2008 Acts and the increased complexity of the law.

Section 1.6694-1(e) of the proposed regulations also proposed a new rule providing that a tax return preparer may not rely on legal conclusions regarding Federal tax issues furnished by taxpayers. The purpose behind this proposal was the belief that in general, although it was reasonable to allow a tax return preparer to rely on facts furnished by the taxpayer in good faith without verification, the tax return preparer should not be able to rely on legal conclusions on issues when the taxpayer may not be an expert and looked to the tax return preparer to determine the legal issue for purposes of preparing the return or claim for refund.

Most commentators expressed concern, however, that tax return preparers have long relied on information that involve mixed questions of fact and law furnished by taxpayers, in addition to legal conclusions. Moreover, the commentators point out that many large entity taxpayers have in-house tax departments staffed by tax professionals who are qualified to perform research and analysis necessary to address many legal issues.

The Treasury Department and the IRS acknowledge that the proposed regulations may be unclear on how the “no reliance on legal conclusions by taxpayers” language in proposed §1.6694-1(e) interacts with the language in proposed §1.6694-2(b)(2) regarding unreasonable assumptions. Accordingly, the “no reliance on legal conclusions by taxpayers” is removed from §1.6694-1(e) of the final regulations. While this phrase is removed from the text of the final regulations, the tax return preparer nevertheless must meet the diligence standards otherwise imposed by this regulation in order to rely properly on information and advice provided by taxpayers or other individuals. Tax return preparers must have no reason to believe that the taxpayer is incompetent to make

these conclusions, have no knowledge that the conclusions are incorrect or incomplete, and make reasonable inquiries if the information as furnished appears to be incorrect or incomplete.

Use of Estimates

One commentator noted that the nature of accounting, upon which calculations of taxable income are based, requires the use of estimates, and urged the Treasury Department and the IRS to include a specific reference to allow the use of estimates in the final regulations. The Treasury Department and the IRS recognize that there are some circumstances when the use of reasonable estimates may be appropriate in the preparation of tax returns (see, for example, §§1.448-2(d), 1.451-1(a), and 1.451-5(c)(1)(ii)), and there are some circumstances in which there may be no practical alternative to the use of reasonable estimates, for example, when the taxpayer’s records are destroyed accidentally or through computer failure. The Treasury Department and the IRS, however, conclude that including a general rule regarding the use of estimates in the preparer penalty regulations that could impact other substantive tax provisions is not appropriate.

Income Derived Determination in Computing Penalty Amount

The final regulations adopt the proposed amendments to §1.6694-1(f), with minor modification. Section 1.6694-1(f) defines “income derived (or to be derived)” with respect to a return or claim for refund as all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

Several commentators requested clarification on this definition of “income derived (or to be derived)” for purposes of computing the section 6694 penalty because it is not necessarily clear what compensation is captured by this definition, which could be interpreted broadly. The final regulations maintain the same definition of “income derived (or to be de-

derived)” as proposed because the Treasury Department and the IRS conclude that the other rules described in §1.6694-1(f) provide appropriate limitations to this definition.

In response to a commentator’s request, the final regulations in §1.6694-1(f)(4) also add an example illustrating how the penalty will be computed in cases involving employees and partners who spend a portion of their time on a particular position subject to the section 6694 penalty for which the firm earns a specific amount.

Firm Liability

The final regulations adopt the proposed amendments to §§1.6694-2(a)(2) and 1.6694-3(a)(2), without modification. One commentator requested examples of a firm disregarding its review procedures through willfulness, recklessness, or gross indifference in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed. The determination as to whether a firm disregards its review procedures will be made based upon all facts and circumstances. Because any example necessarily would be limited to the facts of a particular firm’s review procedures, additional examples on this issue would not meaningfully add to the guidance provided in the proposed regulations.

Reasonable to Believe That More Likely Than Not

Section 1.6694-2(b) of the final regulations defines the “reasonable to believe that the position would more likely than not be sustained on its merits” standard that now applies to positions that are tax shelters and reportable transactions to which section 6662A applies. While the 2008 Act amendment to section 6694 includes a “reasonable to believe” standard rather than the “reasonable belief” standard used in the 2007 Act, the Treasury Department and the IRS are of the view that the two standards have the same meaning. Conforming changes are made throughout the final regulations to reflect the 2008 Act terminology.

Proposed §1.6694-2(b)(1) provided that the “reasonable belief that the position would more likely than not be sustained on its merits” standard will be satisfied

if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits. The proposed regulations stated that whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer's due diligence. Moreover, in determining the level of diligence in a particular case, the proposed regulations provided that the IRS would take into account the tax return preparer's experience with the area of tax law and familiarity with the taxpayer's affairs, as well as the complexity of the issues and facts in the case.

Several commentators requested that the final regulations specify that the amount of due diligence required on the part of the tax return preparer should not be disproportionate to the amount of the tax liability that would be affected by the position at issue. There was also some confusion on whether the due diligence rules in the proposed regulations allowed a less educated, sophisticated, or experienced tax return preparer to escape penalty liability more easily than educated, sophisticated, or experienced tax return preparers. This was not the intent of this rule in the proposed regulations. Due diligence is only one of many factors to consider in determining whether a tax return preparer meets the "reasonable to believe that the position would more likely than not be sustained on its merits" standard and all of the facts and circumstances of each specific case will need to be evaluated in making this determination.

Several commentators suggested that the provisions in §1.6694-2(d)(5) of the proposed regulations permitting tax return preparers to rely upon generally accepted administrative or industry practice in establishing reasonable cause relief from penalties under section 6694 should be extended to allow consideration of generally accepted administrative or industry practice in determining whether the "reasonable to believe that the position would more likely than not be sustained on its merits" standard is satisfied. These comments are not adopted in the final regulations because the Treasury Department and the IRS continue to conclude that the au-

thorities contained in §1.6662-4(d)(3)(iii) (or any successor provision) are the appropriate authorities to be considered in determining whether it is reasonable to believe that the position would more likely than not be sustained on its merits. The "reasonable to believe that the position would more likely than not be sustained on its merits" standard relates to the tax return preparer's evaluation of the merits of a return position, and the merits of a tax return position must be considered in light of established relevant legal authorities. Generally accepted administrative or industry practice are less relevant in considering the merits of a tax return position under applicable law and guidance, although they may be appropriate factors to consider in the context of a tax return preparer's reasonable cause and good faith.

Based upon a comment received, the final regulations in §1.6694-2(b)(4) adopt the same rule as in §1.6662-4(d)(3)(iv)(B) regarding the effect of the taxpayer's jurisdiction on meeting the appropriate standard. The Treasury Department and the IRS are of the view that it is appropriate that the same rule apply for purposes of satisfying the "reasonable to believe that the position more likely than not be sustained on its merits" standard. This approach supports uniform disclosure by taxpayers and tax return preparers and prevents conflicts between taxpayers and tax return preparers in complying with the federal tax laws.

Adequate Disclosure

The final regulations adopt the proposed amendments to §1.6694-2(d)(3), with modification based upon comments received and revisions made in the 2008 Act. For a signing tax return preparer within the meaning of §301.7701-15(b)(1), the final regulations provide that disclosure of a position for which there is a reasonable basis but for which there is not substantial authority is adequate in one of three ways. First, the position may be disclosed on a properly completed and filed Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, as appropriate, or on the tax return in accordance with the applicable annual revenue procedure. See Revenue Procedure 2008-14, 2008-7 I.R.B. 435 (February 19, 2008). Second,

disclosure of the position is adequate if the tax return preparer provides the taxpayer with a prepared tax return that includes the appropriate disclosure in accordance with §1.6662-4(f). Third, for tax returns or claims for refund that are subject to penalties other than the accuracy-related penalty for substantial understatements under sections 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under section 6662. This third rule is intended to address the situation when the penalty standard applicable to the taxpayer is based on compliance with requirements other than disclosure on the return (for example, section 6662(e)). In the case of a nonsigning tax return preparer within the meaning of §301.7701-15(b)(2), the final regulations in §1.6694-2(d)(3)(ii) maintain the same three disclosure rules that were in the proposed regulations.

Two commentators requested clarification of the prohibition against a boilerplate disclaimer and recommended clarifying that a firm does not violate the prohibition simply by adopting a standard approach to disclosure issues. Section 1.6694-2(d)(3)(iii) of the final regulations is revised to provide that no general disclaimer is allowed with respect to the specific facts and circumstances of the taxpayer and the position for which there is no substantial authority. Tax return preparers, and their firms, may use standard language to describe applicable law and may adopt a standard approach to disclosure issues.

One commentator stated that it is unclear what specifically must be documented by the nonsigning tax return preparer in order to avoid imposition of penalties. The final regulations are revised by clarifying that the documented advice that would constitute adequate disclosure in §1.6694-2(d)(3)(ii)(A) with respect to a nonsigning tax return preparer's advice to a taxpayer, if the firm is advising the taxpayer, should confirm that the affected taxpayer has been advised by a tax return preparer in the firm of the potential penalties and the opportunity, if any, to avoid penalty through disclosure.

Similarly, in §1.6694-2(d)(3)(ii)(B) with respect to a nonsigning preparer's advice to another tax return preparer, if providing nonsigning preparer advice to another preparer in the same firm, con-

temporaneous documentation should be satisfied if there is a single instance of contemporaneous documentation within the firm. If the firm is advising another preparer outside of the firm, the final regulations provide that this documentation should confirm that the preparer outside the firm has been advised that disclosure under section 6694(a) may be required.

Finally, the disclosure rules in §1.6694-3(c)(2) of the final regulations are revised to clarify that a tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation has a reasonable basis as defined in §1.6694-2(d)(2) and is adequately disclosed in accordance with §§1.6694-2(d)(3)(i)(A) or (C) or 1.6694-2(d)(3)(ii). In the case of a position contrary to a revenue ruling or notice, a tax return preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the position meets the substantial authority standard described in §1.6662-4(d) and is not with respect to a reportable transaction to which section 6662A applies. This modification ensures that tax return preparers may advise their clients to challenge an IRS ruling or notice under the appropriate circumstances.

Reasonable Cause

The final regulations in §1.6694-2(e) adopt the proposed amendments to §1.6694-2(e) regarding reasonable cause, with minor conforming changes.

Section 1.6694-2(e)(5) permits tax return preparers to rely upon generally accepted administrative or industry practice in establishing reasonable cause relief from penalties under section 6694. Several commentators indicated that guidance is necessary to explain how a tax return preparer should determine whether a practice is “generally accepted” and “industry practice.” The final regulations do not provide further guidance regarding these terms. An accepted administrative or industry practice will be determined based upon all facts and circumstances.

Burden of Proof

One commentator urged that the rules regarding “burden of proof” in tax return

preparer penalty litigation cases should be either eliminated or be substantially revised to comport with section 7491. Section 7427 imposes upon the Secretary the burden of proof on the issue of whether a tax return preparer has willfully attempted in any manner to understate the liability for tax. Section 7491(c) imposes upon the Secretary the burden of production in any court proceeding with respect to the liability of any individual for a penalty. After consideration of the comment, proposed §§1.6694-2(f) and 1.6694-3(g) are removed from the final regulations because these other Code sections as well as case law provide the substantive rules regarding burden of proof and burden of production for penalties.

Negotiation of Check

Section 6695(f) and §1.6695-1(f)(1) prohibit a tax return preparer from endorsing or negotiating a refund check relating to a return for which he or she is a preparer. One commentator recommended that the regulations be clarified to state specifically that a tax return preparer is not prohibited from affixing the taxpayer’s name on a refund check (typically accomplished via a mechanical stamp) for the purpose of depositing the check into an account in the name of the taxpayer. This comment is adopted in §1.6695-1(f)(1) of the final regulations.

Due Diligence for Earned Income Credit

Section 1.6695-2(b)(3) of these final regulations adopt the rules regarding a signing tax return preparer’s due diligence requirements with respect to determining eligibility for the earned income credit, with minor modification. Based upon the concerns of a commentator about one of the examples in this section addressing the representation of married but separated individuals, *Example 3* in the proposed regulations is removed. The Treasury Department and the IRS agree that this example may raise conflict of interest issues and, therefore, replace the example with another example focusing on the need of the tax return preparer to ask relevant questions if a taxpayer attempts to claim a niece or nephew as a qualifying child.

Definition of Tax Return Preparer

The final regulations adopt the proposed amendments to §301.7701-15(b)(1) and (2), with modification. Section 301.7701-15(b)(1) and (2) of the final regulations adds to the section 7701 regulations the definitions of “signing tax return preparer” and “nonsigning tax return preparer.”

Several commentators requested that the final regulations expressly state who is required to sign a tax return. Section 301.7701-15(b)(1) of the final regulations is revised to provide that a signing tax return preparer is the individual tax return preparer who has the primary responsibility for the overall substantive accuracy of the preparation of such return or claim for refund. Conforming changes are additionally made to §1.6695-1(b). The definitions of nonsigning tax return preparer in §301.7701-15(b)(2) and substantial portion in §301.7701-15(b)(3) are generally adopted as proposed. An anti-abuse rule, however, is added in §301.7701-15(b)(2)(i) based upon several commentators’ suggestions. The anti-abuse rule provides that time spent on advice given after events have occurred, even if such time is less than 5 percent of the aggregate time incurred by such individual with respect to the position(s) giving rise to the understatement, will be taken into account if all facts and circumstances show that an individual is primarily responsible for a position taken on a return, gave advice on that position before events occurred primarily to avoid treatment as a tax return preparer subject to section 6694, and for purposes of preparing a tax return the individual confirmed the advice after events had occurred.

List of Returns Subject to Penalty

Several commentators contended that proposed §301.7701-15(b)(4) and the accompanying revenue procedure listing the returns and claims for refund subject to the section 6694 penalty should not include information returns and should limit the definition of return to exclude documents that do not report a tax liability. Similarly, commentators requested excluding Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*, Form 8038-G, *Information Return for Tax-Ex-*

empt Governmental Obligations, Form 8038–GC, *Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales*, and Form 5500, *Annual Return/Report of Employee Benefit Plan*. After consideration of the comments, the Forms 8038, 8038–G, and 8038–GC are classified in the contemporaneously issued revenue procedure with forms that will not subject the preparer to a penalty under section 6694(a), but may subject the preparer to a willful or reckless conduct penalty under section 6694(b) if the information reported on the form constitutes a substantial portion of the tax return or claim for refund and is prepared willfully in any manner to understate the liability of tax on a tax return or claim for refund, or in reckless or intentional disregard of rules or regulations. Also, Form 8038–T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*, and Form 8038–R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*, are added to the list of forms of returns in the revenue procedure subject to the section 6694 penalties. Form 5500 remains in the same category as in Notice 2008–13.

The same commentators also raised the issue of whether the Treasury Department and the IRS should publish the list of returns and claims for refund subject to penalty under sections 6694 and 6695 in these final regulations, rather than in separate guidance in the Internal Revenue Bulletin. The Treasury Department and the IRS continue to conclude that it is appropriate to publish a revenue procedure in the Internal Revenue Bulletin. Notices 2008–12, –13, and –46, along with the previously issued proposed regulations, provided the public with notice of, and an opportunity to comment on, the forms subject to penalty.

Another commentator requested that the final regulations in both §301.7701–15(f) and Circular 230 specifically define the terms “in-house tax professional” and “employer” and provide other guidance on the applicability of these return preparer rules to in-house counsel in Circular 230. Section 7701(a)(36) and §301.7701–15(f)(ix) already except from the definition of tax return preparer any person who prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he

or she is regularly and continuously employed. Additionally, §301.7701–15(f)(4) of the final regulations deems an employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, to be the employee of the other corporation as well. The Treasury Department and the IRS will consider if any other changes are necessary on this issue in future revisions to §10.34 of Circular 230.

Appraisers

Under Treasury Regulations in place since 1977 and the proposed regulations, an appraiser might be subject to penalties under section 6694 as a nonsigning tax return preparer if the appraisal is a substantial portion of the return or claim for refund and the applicable standards of care under section 6694 are not met. Several commentators have stated that appraisers should not be subject to penalties under section 6694 because they are subject to new, higher standards of conduct under section 6695A as set out in the Pension Protection Act of 2006, Pub. L. No. 109–280. The commentators have also urged that assessment of penalties under section 6694 against appraisers would result in imposition of a gratuitous and unnecessary layer of requirements and sanctions without any additional public policy benefit.

After consideration of the comment, the Treasury Department and the IRS continue to include appraisers in the definition of both signing and non-signing preparers, thereby providing the IRS with discretion to impose the section 6694 and 6695A penalties in the alternative against an appraiser depending on the facts and circumstances of the appraiser’s conduct. The IRS, however, will not stack the penalties under sections 6694 and 6695A with respect to the same conduct. A separate regulation will provide guidance under section 6695A.

Disclosure Under Section 6103

One commentator recommended that the Treasury Department and the IRS issue regulations under section 6103 authorizing the disclosure of tax returns and return information to a tax return preparer at the

tax return preparer’s request upon initiation of an examination of the tax return preparer for tax return preparer penalties to the extent the returns and return information are relevant and material to the tax return preparer examination. The Treasury Department and the IRS conclude that no further guidance on this issue in these regulations is necessary because section 6103(h)(4) already authorizes the disclosure of returns and return information by the Government in federal or state, judicial or administrative tax proceedings if the disclosure meets an item or transaction test and the third-party return or return information is directly related to the resolution of an issue in the case.

Appeal Rights

A number of individual commentators questioned whether the proposed regulations would remove the administrative appeal rights available to tax return preparers who are subject to penalty under section 6694. Under Treasury Regulations in place since 1991, the IRS will send a 30-day letter to the tax return preparer notifying the tax return preparer of the proposed penalty or penalties and offering an opportunity to the tax return preparer to request further administrative consideration and a final administrative determination by the IRS concerning the proposed assessment prior to assessment of a penalty under section 6694 (unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment). If the tax return preparer then makes a timely request, assessment may not be made until the IRS makes a final administrative determination adverse to the tax return preparer. These appeal rights are maintained in §1.6694–4(a) of the final regulations.

Applicability Dates

To eliminate any adverse impact that the adoption of these final regulations could have on pending or recently filed returns, these final regulations will apply to returns and claims for refund filed, and advice provided, after December 31, 2008.

Availability of IRS Documents

The IRS notices referred to in this preamble are published in the Internal

Revenue Bulletin and are available at <http://www.irs.gov>.

Effect on Other Documents

The following publications are obsolete as of January 1, 2009:

Notice 2007–54, 2007–27 I.R.B. 12.

Notice 2008–11, 2008–3 I.R.B. 279.

Notice 2008–12, 2008–3 I.R.B. 280.

Notice 2008–13, 2008–3 I.R.B. 282.

Notice 2008–46, 2008–18 I.R.B. 868.

Special Analyses

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an agency issues a rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the final rulemaking will not have a significant economic impact on a substantial number of small entities.

The final rules affect tax return preparers. The IRS estimates there are 38,566 tax return preparation firms and 260,338 self-employed tax return preparers that qualify as small entities. Therefore, the IRS has determined that these final rules will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the final rule will not be significant. The statute and final regulations would require entities that employ tax return preparers to retain a record of the name, taxpayer identification number and principal place of work of each tax return preparer employed. The IRS estimates that this would not require purchase of additional software and would take five minutes per tax return preparer employed. The statute and final regulations would also require tax return preparers to retain a complete copy of a return (or claim for refund) or a list of the

name, taxpayer identification number and taxable year for each return (or claim for refund) and the name of the tax return preparer required to sign the return or claim for refund. Many tax return preparers have copying machines or scanners and already make copies of the returns prepared, and the IRS estimates this would not require the purchase of additional equipment. The IRS estimates that it would take an average of five minutes to make copies or prepare a record of the returns or claims for refund prepared. Accordingly, the burden on employers of tax return preparers to make a record of the name, taxpayer identification number, and principal place of work of each employed tax return preparer, and a copy of each return or claim for refund prepared, or a record, is insignificant.

The final regulations also conform the standards of conduct for the tax return preparer penalties under section 6694(a) to the provisions of the 2007 and 2008 Acts. Tax return preparers already enroll in educational seminars or training programs to keep up to date with the latest changes to the Code, and the provisions of the 2007 and 2008 Acts and the regulations generally will be part of that training.

Based on these facts, it is certified that the collection of information contained in these final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Matthew S. Cooper and Michael E. Hara, Office of the Associate Chief Counsel (Procedure and Administration).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 1.6109–2 also issued under 26 U.S.C. 6109(a). * * *

Section 1.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Section 1.6695–2 also issued under 26 U.S.C. 6695(g). * * *

Par. 2. Section 1.6060–1 is amended by revising the section heading and paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§1.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* (1) Each person who employs one or more signing tax return preparers to prepare any return of tax or claim for refund of tax, other than for the person, at any time during a return period shall satisfy the requirements of section 6060 of the Internal Revenue Code by—

(i) Retaining a record of the name, taxpayer identification number, and principal place of work during the return period of each tax return preparer employed by the person at any time during that period; and

(ii) Making that record available for inspection upon request by the Commissioner.

(2) The record described in this paragraph (a) must be retained and kept available for inspection for the 3-year period following the close of the return period to which that record relates.

(3) The person may choose any form of documentation to be used under this section as a record of the signing tax return preparers employed during a return period. The record, however, must disclose on its face which individuals were employed as tax return preparers during that period.

(4) For the definition of the term “signing tax return preparer”, see §301.7701–15(b)(1) of this chapter. For the definition of the term “return period”, see paragraph (b) of this section.

(5)(i) For purposes of this section, any individual who, in acting as a signing tax return preparer, is not employed by another tax return preparer shall be treated as his

or her own employer. Thus, a sole proprietor shall retain and make available a record with respect to himself (or herself) as provided in this section.

(ii) A partnership shall, for purposes of this section, be treated as the employer of the partners of the partnership and shall retain and make available a record with respect to the partners and others employed by the partnership as provided in this section.

* * * * *

(c) *Penalty.* For the civil penalty for failure to retain and make available a record of the tax return preparers employed during a return period as required under this section, or for failure to include an item in the record required to be retained and made available under this section, see §1.6695-1(e).

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 3. Section 1.6107-1 is revised to read as follows:

§1.6107-1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *Furnishing copy to taxpayer*—(1) A person who is a signing tax return preparer of any return of tax or claim for refund of tax under the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer (or nontaxable entity) not later than the time the return or claim for refund is presented for the signature of the taxpayer (or nontaxable entity). The signing tax return preparer may, at its option, request a receipt or other evidence from the taxpayer (or nontaxable entity) sufficient to show satisfaction of the requirement of this paragraph (a).

(2) The tax return preparer must provide a complete copy of the return or claim for refund filed with the IRS to the taxpayer in any media, including electronic media, that is acceptable to both the taxpayer and the tax return preparer. In the case of an electronically filed return, a complete copy of a taxpayer's return or claim for refund consists of the electronic portion of the return or claim for refund, including all schedules, forms, pdf attachments, and juries, that was filed with the IRS. The copy

provided to the taxpayer must include all information submitted to the IRS to enable the taxpayer to determine what schedules, forms, electronic files, and other supporting materials have been filed with the return. The copy, however, need not contain the identification number of the paid tax return preparer. The electronic portion of the return or claim for refund may be contained on a replica of an official form or on an unofficial form. On an unofficial form, however, data entries must reference the line numbers or descriptions on an official form.

(3) For electronically filed Forms 1040EZ, "Income Tax Return for Single and Joint Filers With No Dependents," and Form 1040A, "U.S. Individual Income Tax Return," filed for the 2009, 2010 and 2011 taxable years, the information may be provided on a replica of a Form 1040, "U.S. Individual Income Tax Return", that provides all of the information. For other electronically filed returns, the information may be provided on a replica of an official form that provides all of the information.

(b) *Copy or record to be retained.* (1) A person who is a signing tax return preparer of any return or claim for refund shall—

(i)(A) Retain a completed copy of the return or claim for refund; or

(B) Retain a record, by list, card file, or otherwise of the name, taxpayer identification number, and taxable year of the taxpayer (or nontaxable entity) for whom the return or claim for refund was prepared, and the type of return or claim for refund prepared;

(ii) Retain a record, by retention of a copy of the return or claim for refund, maintenance of a list, card file, or otherwise, for each return or claim for refund presented to the taxpayer (or nontaxable entity), of the name of the individual tax return preparer required to sign the return or claim for refund pursuant to §1.6695-1(b); and

(iii) Make the copy or record of returns and claims for refund and record of the individuals required to sign available for inspection upon request by the Commissioner.

(2) The material described in this paragraph (b) shall be retained and kept available for inspection for the 3-year period following the close of the return period during which the return or claim for re-

fund was presented for signature to the taxpayer (or nontaxable entity). In the case of a return that becomes due (with extensions, if any) during a return period following the return period during which the return was presented for signature, the material shall be retained and kept available for inspection for the 3-year period following the close of the later return period in which the return became due. For the definition of "return period," see section 6060(c). If the person subject to the record retention requirement of this paragraph (b) is a corporation or a partnership that is dissolved before completion of the 3-year period, then all persons who are responsible for the winding up of the affairs of the corporation or partnership under state law shall be subject, on behalf of the corporation or partnership, to these record retention requirements until completion of the 3-year period. If state law does not specify any person or persons as responsible for winding up, then, collectively, the directors or general partners shall be subject, on behalf of the corporation or partnership, to the record retention requirements of this paragraph (b). For purposes of the penalty imposed by section 6695(d), such designated persons shall be deemed to be the tax return preparer and will be jointly and severally liable for each failure.

(c) *Tax return preparer.* For the definition of "signing tax return preparer," see §301.7701-15(b)(1) of this chapter. For purposes of applying this section, a corporation, partnership or other organization that employs a signing tax return preparer to prepare for compensation (or in which a signing tax return preparer is compensated as a partner or member to prepare) a return of tax or claim for refund shall be treated as the sole signing tax return preparer.

(d) *Penalties.* (1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayers (or nontaxable entity) as required under paragraph (a) of this section, see section 6695(a) and §1.6695-1(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a record as required under paragraph (b) of this section, see section 6695(d) and §1.6695-1(d).

(e) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 4. Section 1.6109-2 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§1.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund filed after December 31, 2008.

(a) *Furnishing identifying number.* (1) Each filed return of tax or claim for refund of tax under the Internal Revenue Code prepared by one or more tax return preparers must include the identifying number of the tax return preparer required by §1.6695-1(b) to sign the return or claim for refund. In addition, if there is an employment arrangement or association between the individual tax return preparer and another person (except to the extent the return prepared is for the person), the identifying number of the other person must also appear on the filed return or claim for refund. For the definition of the term “tax return preparer,” see section 7701(a)(36) and §301.7701-15 of this chapter.

(2) The identifying number of an individual tax return preparer is that individual’s social security account number or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(3) The identifying number of a person (whether an individual or entity) who employs or associates with an individual tax return preparer described in paragraph (a)(2) of this section to prepare the return or claim for refund (other than a return prepared for the person) is the person’s employer identification number.

* * * * *

(d) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008. For returns or claims for refund filed before January 1, 2000, see §1.6109-2A(a).

Par. 5. Section 1.6694-0 is revised to read as follows:

§1.6694-0 Table of contents.

This section lists the captions that appear in §§1.6694-1 through 1.6694-4.

§1.6694-1 Section 6694 penalties applicable to tax return preparers.

(a) Overview.

(1) In general.
(2) Date return is deemed prepared.
(b) Tax return preparer.
(1) In general.
(2) Responsibility of signing tax return preparer.

(3) Responsibility of nonsigning tax return preparer.
(4) Responsibility of signing and nonsigning tax return preparer.
(5) Tax return preparer and firm responsibility.

(6) Examples.
(c) Understatement of liability.
(d) Abatement of penalty where taxpayer’s liability not understated.

(e) Verification of information furnished by taxpayer or other third party.

(1) In general.
(2) Verification of information on previously filed returns.

(3) Examples.
(f) Income derived (or to be derived) with respect to the return or claim for refund.

(1) In general.
(2) Compensation.
(i) Multiple engagements.
(ii) Reasonable allocation.
(iii) Fee refunds.
(iv) Reduction of compensation.
(3) Individual and firm allocation.
(4) Examples.
(g) Effective/applicability date.

§1.6694-2 Penalty for understatement due to an unreasonable position.

(a) In general.
(1) Proscribed conduct.
(2) Special rule for corporations, partnerships, and other firms.

(b) Reasonable to believe that the position would more likely than not be sustained on its merits.

(1) In general.
(2) Authorities.
(3) Written determinations.
(4) Taxpayer’s jurisdiction.
(5) When “more likely than not” standard must be satisfied.

(c) Substantial authority.
(d) Exception for adequate disclosure of positions with a reasonable basis.

(1) In general.
(2) Reasonable basis.
(3) Adequate disclosure.
(i) Signing tax return preparers.

(ii) Nonsigning tax return preparers.
(A) Advice to taxpayers.
(B) Advice to another tax return preparer.

(iii) Requirements for advice.
(iv) Pass-through entities.
(v) Examples.
(e) Exception for reasonable cause and good faith.

(1) Nature of the error causing the understatement.

(2) Frequency of errors.
(3) Materiality of errors.
(4) Tax return preparer’s normal office practice.

(5) Reliance on advice of others.
(6) Reliance on generally accepted administrative or industry practice.
(f) Effective/applicability date.

§1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) In general.
(1) Proscribed conduct.
(2) Special rule for corporations, partnerships, and other firms.

(b) Willful attempt to understate liability.

(c) Reckless or intentional disregard.
(d) Examples.
(e) Rules or regulations.
(f) Section 6694(b) penalty reduced by section 6694(a) penalty.

(g) Effective/applicability date.

§1.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer’s liability and certain other procedural matters.

(a) In general.
(b) Tax return preparer must bring suit in district court to determine liability for penalty.

(c) Suspension of running of period of limitations on collection.
(d) Effective/applicability date.

Par. 6. Section 1.6694-1 is revised to read as follows:

§1.6694-1 Section 6694 penalties applicable to tax return preparers.

(a) *Overview—(1) In general.* Sections 6694(a) and (b) impose penalties on tax return preparers for conduct giving rise to

certain understatements of liability on a return (including an amended or adjusted return) or claim for refund. For positions other than those with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed 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 for an understatement of tax liability that is due to an undisclosed position for which the tax return preparer did not have substantial authority or due to a disclosed position for which there is no reasonable basis. For positions with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) or reportable transactions to which section 6662A applies, the section 6694(a) penalty is imposed 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 for an understatement of tax liability for which it is not reasonable to believe that the position would more likely than not be sustained on its merits. The section 6694(b) penalty is imposed in an amount equal to the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for an understatement of liability with respect to tax that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. Refer to §1.6694-2 for rules relating to the penalty under section 6694(a). Refer to §1.6694-3 for rules relating to the penalty under section 6694(b).

(2) *Date return is deemed prepared.* For purposes of the penalties under section 6694, a return or claim for refund is deemed prepared on the date it is signed by the tax return preparer. If a signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter fails to sign the return, the return or claim for refund is deemed prepared on the date the return or claim is filed. See §1.6695-1 of this section. In the case of a nonsigning tax return preparer within the meaning of §301.7701-15(b)(2) of this chapter, the relevant date is the date the nonsigning tax return preparer provides the tax advice with respect to the position giving rise to the understatement. This date will be determined based on all the facts and circumstances.

(b) *Tax return preparer*—(1) *In general.* For purposes of this section, “tax return preparer” means any person who is a tax return preparer within the meaning of section 7701(a)(36) and §301.7701-15 of this chapter. An individual is a tax return preparer subject to section 6694 if the individual is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. See §301.7701-15(b)(3). There is only one individual within a firm who is primarily responsible for each position on the return or claim for refund giving rise to an understatement. In the course of identifying the individual who is primarily responsible for the position, the Internal Revenue Service (IRS) may advise multiple individuals within the firm that it may be concluded that they are the individual within the firm who is primarily responsible. In some circumstances, there may be more than one tax return preparer who is primarily responsible for the position(s) giving rise to an understatement if multiple tax return preparers are employed by, or associated with, different firms.

(2) *Responsibility of signing tax return preparer.* If there is a signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter within a firm, the signing tax return preparer generally will be considered the person who is primarily responsible for all of the positions on the return or claim for refund giving rise to an understatement unless, based upon credible information from any source, it is concluded that the signing tax return preparer is not primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement. In that case, a nonsigning tax return preparer within the signing tax return preparer’s firm (as determined in paragraph (b)(3) of this section) will be considered the tax return preparer who is primarily responsible for the position(s) on the return or claim for refund giving rise to an understatement.

(3) *Responsibility of nonsigning tax return preparer.* If there is no signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter for the return or claim for refund within the firm or if, after the application of paragraph (b)(2) of this section, it is concluded that the signing tax return preparer is not primarily responsible for the position, the

nonsigning tax return preparer within the meaning of §301.7701-15(b)(2) of this chapter within the firm with overall supervisory responsibility for the position(s) giving rise to the understatement generally will be considered the tax return preparer who is primarily responsible for the position for purposes of section 6694 unless, based upon credible information from any source, it is concluded that another nonsigning tax return preparer within that firm is primarily responsible for the position(s) on the return or claim for refund giving rise to the understatement.

(4) *Responsibility of signing and nonsigning tax return preparer.* If the information presented would support a finding that, within a firm, either the signing tax return preparer or a nonsigning tax return preparer is primarily responsible for the position(s) giving rise to the understatement, the penalty may be assessed against either one of the individuals, but not both, as the primarily responsible tax return preparer.

(5) *Tax return preparer and firm responsibility.* To the extent provided in §§1.6694-2(a)(2) and 1.6694-3(a)(2), an individual and the firm that employs the individual, or the firm of which the individual is a partner, member, shareholder, or other equity holder, both may be subject to penalty under section 6694 with respect to the position(s) on the return or claim for refund giving rise to an understatement. If an individual (other than the sole proprietor) who is employed by a sole proprietorship is subject to penalty under section 6694, the sole proprietorship is considered a “firm” for purposes of this paragraph (b).

(6) *Examples.* The provisions of paragraph (b) of this section are illustrated by the following examples:

Example 1. Attorney A provides advice to Client C concerning the proper treatment of an item with respect to which all events have occurred on C’s tax return. In preparation for providing that advice, A seeks advice regarding the proper treatment of the item from Attorney B, who is within the same firm as A, but A is the attorney who signs C’s return as a tax return preparer. B provides advice on the treatment of the item upon which A relies. B’s advice is reflected on C’s tax return but no disclosure was made in accordance with §1.6694-2(d)(3). The advice constitutes preparation of a substantial portion of the return within the meaning of §301.7701-15(b)(3). The IRS later challenges the position taken on the tax return, giving rise to an understatement of liability. For purposes of the regulations under section 6694, A is initially considered the tax return preparer with respect to C’s return, and the IRS advises A that A may

be subject to the penalty under section 6694 with respect to C's return. Based upon information received from A or another source, it may be concluded that B, rather than A, had primary responsibility for the position taken on the return that gave rise to the understatement and may be subject to penalty under section 6694 instead of A.

Example 2. Same as *Example 1*, except that neither Attorney A nor any other source produce credible information that Attorney B had primary responsibility for the position on the return giving rise to an understatement. Attorney A is the tax return preparer who may be subject to penalty under section 6694 with respect to C's return.

Example 3. Same as *Example 1*, except that neither Attorney A nor any other attorney within A's firm signs Client C's return as a tax return preparer. Attorney B is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position giving rise to an understatement. Accordingly, B is the tax return preparer who is primarily responsible for the position on C's return giving rise to an understatement and may be subject to penalty under section 6694.

Example 4. Same as *Example 1*, except Attorney D, who works for a different firm than A, also provides advice on the same position upon which A relies. It may be concluded that D is also primarily responsible for the position on the return and may be subject to penalty under section 6694.

Example 5. Same as *Example 1*, except Attorney B is able to present credible information that A is also responsible for the position on C's return giving rise to an understatement. The IRS may conclude between A and B, the two responsible persons for the position, who is primarily responsible and may assess a section 6694 penalty against A or B, but not both, as the primarily responsible tax return preparer.

(c) *Understatement of liability.* For purposes of this section, an "understatement of liability" exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by the Internal Revenue Code (Code), or an overstatement of the net amount creditable or refundable with respect to any tax imposed by the Code. The net amount payable in a taxable year with respect to the return for which the tax return preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by the Code does not include additions to the tax, additional amounts, and assessable penalties imposed by subchapter 68 of the Code. Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the tax return preparer that is separate and apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a

penalty under section 6694(a) or (b) concerning a return or claim for refund has been assessed against one or more tax return preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the position(s) on the return or claim for refund, then—

(1) The assessment shall be abated; and

(2) If any amount of the penalty was paid, that amount shall be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer or other party—*(1) *In general.* For purposes of sections 6694(a) and (b) (including demonstrating that a position complied with relevant standards under section 6694(a) and demonstrating reasonable cause and good faith under §1.6694-2(e)), the tax return preparer generally may rely in good faith without verification upon information furnished by the taxpayer. A tax return preparer also may rely in good faith and without verification upon information and advice furnished by another advisor, another tax return preparer or other party (including another advisor or tax return preparer at the tax return preparer's firm). The tax return preparer is not required to audit, examine or review books and records, business operations, documents, or other evidence to verify independently information provided by the taxpayer, advisor, other tax return preparer, or other party. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist (for example, that the taxpayer maintain specific documents) before a deduction or credit may be claimed. The tax return preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition of the claiming of a deduction or credit.

(2) *Verification of information on previously filed returns.* For purposes of section

6694(a) and (b) (including meeting the reasonable to believe that the position would more likely than not be sustained on its merits and reasonable basis standards in §§1.6694-2(b) and (d)(2), and demonstrating reasonable cause and good faith under §1.6694-2(e)), a tax return preparer may rely in good faith without verification upon a tax return that has been previously prepared by a taxpayer or another tax return preparer and filed with the IRS. For example, a tax return preparer who prepares an amended return (including a claim for refund) need not verify the positions on the original return. The tax return preparer, however, may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer. The tax return preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. The tax return preparer must confirm that the position being relied upon has not been adjusted by examination or otherwise.

(3) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. During an interview conducted by Preparer E, a taxpayer stated that he had made a charitable contribution of real estate in the amount of \$50,000 during the tax year, when in fact he had not made this charitable contribution. E did not inquire about the existence of a qualified appraisal or complete a Form 8283, *Noncash Charitable Contributions*, in accordance with the reporting and substantiation requirements under section 170(f)(11). E reported a deduction on the tax return for the charitable contribution, which resulted in an understatement of liability for tax, and signed the tax return as the tax return preparer. E is subject to a penalty under section 6694.

Example 2. While preparing the 2008 tax return for an individual taxpayer, Preparer F realizes that the taxpayer did not provide a Form 1099-INT, "Interest Income", for a bank account that produced significant taxable income in 2007. When F inquired about any other income, the taxpayer furnished the Form 1099-INT to F for use in preparation of the 2008 tax return. F did not know that the taxpayer owned an additional bank account that generated taxable income for 2008, and the taxpayer did not reveal this information to the tax return preparer notwithstanding F's general inquiry about any other income. F signed the taxpayer's return as the tax return preparer. F is not subject to a penalty under section 6694.

Example 3. In preparing a tax return, for purposes of determining the deductibility of a contribution by an employer for a qualified pension plan, Accountant G relies on a computation of the section 404 limit on deductible amounts made by the enrolled actuary for the plan. On the basis of this calculation, G completed and signed the tax return. It is later determined that there is an understatement of liability for tax that

resulted from the overstatement of the section 404 limit on deductible amounts made by the actuary. G had no reason to believe that the actuary's calculation of the limit on deductible contributions was incorrect or incomplete, and the calculation appeared reasonable on its face. G was also not aware at the time the return was prepared of any reason why the actuary did not know all of the relevant facts or that the calculation of the limit on deductible contributions was no longer reliable due to developments in the law since the time the calculation was given. G is not subject to a penalty under section 6694. The actuary, however, may be subject to penalty under section 6694 if the calculation provided by the actuary constitutes a substantial portion of the tax return within the meaning of §301.7701-15(b)(3) of this chapter.

(f) *Income derived (or to be derived) with respect to the return or claim for refund*—(1) *In general.* For purposes of sections 6694(a) and (b), *income derived (or to be derived)* means all compensation the tax return preparer receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation of a tax return preparer who is not compensated directly by the taxpayer, but rather by a firm that employs the tax return preparer or with which the tax return preparer is associated, *income derived (or to be derived)* means all compensation the tax return preparer receives from the firm that can be reasonably allocated to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. In the situation where a firm that employs the individual tax return preparer (or the firm of which the individual tax return preparer is a partner, member, shareholder, or other equity holder) is subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§1.6694-2(a)(2) or 1.6694-3(a)(2), *income derived (or to be derived)* means all compensation the firm receives or expects to receive with respect to the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement.

(2) *Compensation*—(i) *Multiple engagements.* For purposes of applying paragraph (f)(1) of this section, if the tax

return preparer or the tax return preparer's firm has multiple engagements related to the same return or claim for refund, only those engagements relating to the position(s) taken on the return or claim for refund that gave rise to the understatement are considered for purposes of calculating the income derived (or to be derived) with respect to the return or claim for refund.

(ii) *Reasonable allocation.* For purposes of applying paragraph (f)(1) of this section, only compensation for tax advice that is given with respect to events that have occurred at the time the advice is rendered and that relates to the position(s) giving rise to the understatement will be taken into account for purposes of calculating the section 6694(a) and (b) penalties. If a lump sum fee is received that includes amounts not taken into account under the preceding sentence, the amount of income derived will be based on a reasonable allocation of the lump sum fee between the tax advice giving rise to the penalty and the advice that does not give rise to the penalty.

(iii) *Fee refunds.* For purposes of applying paragraph (f)(1) of this section, a refund to the taxpayer of all or part of the amount paid to the tax return preparer or the tax return preparer's firm will not reduce the amount of the section 6694 penalty assessed. A refund in this context does not include a discounted fee or alternative billing arrangement for the services provided.

(iv) *Reduction of compensation.* For purposes of applying paragraph (f)(1) of this section, it may be concluded based upon information provided by the tax return preparer or the tax return preparer's firm that an appropriate allocation of compensation attributable to the position(s) giving rise to the understatement on the return or claim for refund is less than the total amount of compensation associated with the engagement. For example, the number of hours of the engagement spent on the position(s) giving rise to the understatement may be less than the total hours associated with the engagement. If this is concluded, the amount of the penalty will be calculated based upon the compensation attributable to the position(s) giving rise to the understatement. Otherwise, the total amount of compensation from the engagement will be the amount of income derived for purposes of calculating the penalty under section 6694.

(3) *Individual and firm allocation.* If both an individual within a firm and a firm that employs the individual (or the firm of which the individual is a partner, member, shareholder, or other equity holder) are subject to a penalty under section 6694(a) or (b) pursuant to the provisions in §§1.6694-2(a)(2) or 1.6694-3(a)(2), the amount of penalties assessed against the individual and the firm shall not exceed 50 percent of the income derived (or to be derived) by the firm from the engagement of preparing the return or claim for refund or providing tax advice (including research and consultation) with respect to the position(s) taken on the return or claim for refund that gave rise to the understatement. The portion of the total amount of the penalty assessed against the individual tax return preparer shall not exceed 50 percent of the individual's compensation as determined under paragraphs (f)(1) and (2) of this section.

(4) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

Example 1. Signing Tax Return Preparer H is engaged by a taxpayer and paid a total of \$21,000. Of this amount, \$20,000 relates to research and consultation regarding a transaction that is later reported on a return, and \$1,000 is for the activities relating to the preparation of the return. Based on H's hourly rates, a reasonable allocation of the amount of compensation related to the advice rendered prior to the occurrence of events that are the subject of the advice is \$5,000. The remaining compensation of \$16,000 is considered to be compensation related to the advice rendered after the occurrence of events that are the subject of the advice and return preparation. The income derived by H with respect to the return for purposes of computing the penalty under section 6694(a) is \$16,000, and the amount of the penalty imposed under section 6694(a) is \$8,000.

Example 2. Accountants I, J, and K are employed by Firm L. I is a principal manager of Firm L and provides corporate tax advice for the taxpayer after all events have occurred subject to an engagement for corporate tax advice. J provides international tax advice for the taxpayer after all events have occurred subject to a different engagement for international tax advice. K prepares and signs the taxpayer's return under a general tax services engagement. I's advice is the source of an understatement on the return and the advice constitutes preparation of a substantial portion of the return within the meaning of §301.7701-15(b) of this chapter. I is the nonsigning tax return preparer within the firm with overall supervisory responsibility for the position on the taxpayer's return giving rise to an understatement. Thus, I is the tax return preparer who is primarily responsible for the position on the taxpayer's return giving rise to the understatement. Because K's signature as the signing tax return preparer is on the return, the IRS advises K that K may be subject to the section 6694(a) penalty. K

provides credible information that I is the tax return preparer with primary responsibility for the position that gave rise to the understatement. The IRS, therefore, assesses the section 6694 penalty against I. The portion of the total amount of the penalty allocable to I does not exceed 50 percent of that part of I's compensation that is attributable to the corporate tax advice engagement. In the event that Firm L is also liable under the provisions in §1.6694-2(a)(2), the IRS assesses the section 6694 penalty in an amount not exceeding 50 percent of Firm L's firm compensation based on the engagement relating to the corporate tax advice services provided by I where there is no applicable reduction in compensation pursuant to §1.6694-1(f)(2)(iii).

Example 3. Same facts as *Example 2*, except that I provides the advice on the corporate matter when the events have not yet occurred. I's advice is the cause of an understatement position on the return, but I is not a tax return preparer pursuant to §301.7701-15(b)(2) or (3) of this chapter. K is not limited to reliance on persons who provide post-transactional advice if such reliance is reasonable and in good faith. Further, K has reasonable cause because K relied on I for the advice on the corporate tax matter. I, K and Firm L are not liable for the section 6694 penalty.

Example 4. Attorney M is an employee of Firm N with a salary of \$75,000 per year. M performs tax preparation work for Client O. Client O's return contains a position that results in an understatement subject to the section 6694 penalty. M spent 100 hours on the position (out of a total 2,000 billed during the year). The total fees earned by Firm N with respect to the position reflected on Client O's return are \$50,000. If M is subject to the penalty, the penalty amount computed under the 50 percent of income standard is $.5 \times (100/2000) \times \$75,000 = \$1,875$. If Firm N is subject to the penalty, the penalty amount computed under the 50% of income standard is $.5 \times \$50,000 = \$25,000$, less any penalty amount imposed against M. If a penalty of \$1,875 was assessed against M and Firm N was subject to the penalty, a penalty of \$23,125 would be the amount of penalty assessed against Firm N.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 7. Section 1.6694-2 is revised to read as follows:

§1.6694-2 Penalty for understatement due to an unreasonable position.

(a) *In general—(1) Proscribed conduct.* Except as otherwise provided in this section, a tax return preparer is liable for a penalty under section 6694(a) equal to the greater of \$1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer for any return or claim for refund that it prepares that results in an understatement of liability due to a position if the tax return preparer knew (or reasonably

should have known) of the position and either—

(i) The position is with respect to 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;

(ii) The position was not disclosed as provided in this section, the position is not with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, and there was not substantial authority for the position; or

(iii) The position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) was disclosed as provided in this section but there was no reasonable basis for the position.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(a) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(a);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

(b) *Reasonable to believe that the position would more likely than not be sustained on its merits—(1) In general.* If a position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, it is “reasonable to believe

that a position would more likely than not be sustained on its merits” if the tax return preparer analyzes the pertinent facts and authorities and, in reliance upon that analysis, reasonably concludes in good faith that the position has a greater than 50 percent likelihood of being sustained on its merits. In reaching this conclusion, the possibility that the position will not be challenged by the Internal Revenue Service (IRS) (for example, because the taxpayer's return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by §1.6662-4(d)(3)(ii) (or any successor provision) for purposes of determining whether substantial authority is present applies for purposes of determining whether the more likely than not standard is satisfied. Whether a tax return preparer meets this standard will be determined based upon all facts and circumstances, including the tax return preparer's diligence. In determining the level of diligence in a particular situation, the tax return preparer's experience with the area of Federal tax law and familiarity with the taxpayer's affairs, as well as the complexity of the issues and facts, will be taken into account. A tax return preparer may reasonably believe that a position more likely than not would be sustained on its merits despite the absence of other types of authority if the position is supported by a well-reasoned construction of the applicable statutory provision. For purposes of determining whether it is reasonable to believe that the position would more likely than not be sustained on the merits, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§1.6694-1(e) and 1.6694-2(e)(5).

(2) *Authorities.* The authorities considered in determining whether a position satisfies the more likely than not standard are those authorities provided in §1.6662-4(d)(3)(iii) (or any successor provision).

(3) *Written determinations.* The tax return preparer may avoid the section 6694(a) penalty by taking the position that the tax return preparer reasonably

believed that the taxpayer's position satisfies the "more likely than not" standard if the taxpayer is the subject of a "written determination" as provided in §1.6662-4(d)(3)(iv)(A).

(4) *Taxpayer's jurisdiction.* The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether it is reasonable to believe that the position would more likely than not be sustained on the merits. Notwithstanding the preceding sentence, the tax return preparer may reasonably believe that the position would more likely than not be sustained on the merits if the position is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(5) *When "more likely than not" standard must be satisfied.* For purposes of this section, the requirement that a position satisfies the "more likely than not" standard must be satisfied on the date the return is deemed prepared, as prescribed by §1.6694-1(a)(2).

(c) [Reserved].

(d) *Exception for adequate disclosure of positions with a reasonable basis—(1) In general.* The section 6694(a) penalty will not be imposed on a tax return preparer if the position taken (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) has a reasonable basis and is adequately disclosed within the meaning of paragraph (c)(3) of this section. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (e) of this section.

(2) *Reasonable basis.* For purposes of this section, "reasonable basis" has the same meaning as in §1.6662-3(b)(3) or any successor provision of the accuracy-related penalty regulations. For purposes of determining whether the tax return preparer has a reasonable basis for a position, a tax return preparer may rely in good faith without verification upon information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), as provided in §§1.6694-1(e) and 1.6694-2(e)(5).

(3) *Adequate disclosure—(i) Signing tax return preparers.* In the case of a signing tax return preparer within the meaning of §301.7701-15(b)(1) of this chapter, disclosure of a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority is adequate if the tax return preparer meets any of the following standards:

(A) The position is disclosed in accordance with §1.6662-4(f) (which permits disclosure on a properly completed and filed Form 8275, "Disclosure Statement," or Form 8275-R, "Regulation Disclosure Statement," as appropriate, or on the tax return in accordance with the annual revenue procedure described in §1.6662-4(f)(2));

(B) The tax return preparer provides the taxpayer with the prepared tax return that includes the disclosure in accordance with §1.6662-4(f); or

(C) For returns or claims for refund that are subject to penalties pursuant to section 6662 other than the accuracy-related penalty attributable to a substantial understatement of income tax under section 6662(b)(2) and (d), the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer under section 6662. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files.

(ii) *Nonsigning tax return preparers.* In the case of a nonsigning tax return preparer within the meaning of §301.7701-15(b)(2) of this chapter, disclosure of a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) that satisfies the reasonable basis standard but does not satisfy the substantial authority standard is adequate if the position is disclosed in accordance with §1.6662-4(f) (which permits disclosure on a properly completed and filed Form 8275 or Form 8275-R, as applicable, or on the return in accordance with an annual revenue procedure described in §1.6662-4(f)(2)). In addition, disclosure of a position is adequate in the case of a nonsigning tax return preparer if, with respect to that position, the tax return preparer complies with the provisions of paragraph (d)(3)(ii)(A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers.* If a nonsigning tax return preparer provides advice to the taxpayer with respect to a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority, disclosure of that position is adequate if the tax return preparer advises the taxpayer of any opportunity to avoid penalties under section 6662 that could apply to the position, if relevant, and of the standards for disclosure to the extent applicable. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files. The contemporaneous documentation should reflect that the affected taxpayer has been advised by a tax return preparer in the firm of the potential penalties and the opportunity to avoid penalty through disclosure.

(B) *Advice to another tax return preparer.* If a nonsigning tax return preparer provides advice to another tax return preparer with respect to a position (other than a position with respect to a tax shelter or a reportable transaction to which section 6662A applies) for which there is a reasonable basis but for which there is not substantial authority, disclosure of that position is adequate if the tax return preparer advises the other tax return preparer that disclosure under section 6694(a) may be required. The tax return preparer must also contemporaneously document the advice in the tax return preparer's files. The contemporaneous documentation should reflect that the tax return preparer outside the firm has been advised that disclosure under section 6694(a) may be required. If the advice is to another nonsigning tax return preparer within the same firm, contemporaneous documentation is satisfied if there is a single instance of contemporaneous documentation within the firm.

(iii) *Requirements for advice.* For purposes of satisfying the disclosure standards of paragraphs (d)(3)(i)(C) and (ii) of this section, each return position for which there is a reasonable basis but for which there is not substantial authority must be addressed by the tax return preparer. The advice to the taxpayer with respect to each position, therefore, must be particular to the taxpayer and tailored to the taxpayer's facts and circumstances. The tax return preparer is required to contemporaneously

document the fact that the advice was provided. There is no general *pro forma* language or special format required for a tax return preparer to comply with these rules. A general disclaimer will not satisfy the requirement that the tax return preparer provide and contemporaneously document advice regarding the likelihood that a position will be sustained on the merits and the potential application of penalties as a result of that position. Tax return preparers, however, may rely on established forms or templates in advising clients regarding the operation of the penalty provisions of the Internal Revenue Code. A tax return preparer may choose to comply with the documentation standard in one document addressing each position or in multiple documents addressing all of the positions.

(iv) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity is adequate if made at the entity level in accordance with the rules in §1.6662-4(f)(5) or at the entity level in accordance with the rules in paragraphs (d)(3)(i) or (ii) of this section.

(v) *Examples.* The provisions of paragraph (d)(3) of this section are illustrated by the following examples:

Example 1. An individual taxpayer hires Accountant R to prepare its income tax return. A particular position taken on the tax return does not have substantial authority although there is a reasonable basis for the position. The position is not with respect to a tax shelter or a reportable transaction to which section 6662A applies. R prepares and signs the tax return and provides the taxpayer with the prepared tax return that includes the Form 8275, "Disclosure Statement," disclosing the position taken on the tax return. The individual taxpayer signs and files the tax return without disclosing the position. The IRS later challenges the position taken on the tax return, resulting in an understatement of liability. R is not subject to a penalty under section 6694.

Example 2. Attorney S advises a large corporate taxpayer concerning the proper treatment of complex entries on the corporate taxpayer's tax return. S has reason to know that the tax attributable to the entries is a substantial portion of the tax required to be shown on the tax return within the meaning of §301.7701-15(b)(3). When providing the advice, S concludes that one position does not have substantial authority, although the position meets the reasonable basis standard. The position is not with respect to a tax shelter or a reportable transaction to which section 6662A applies. S advises the corporate taxpayer that the position lacks substantial authority and the taxpayer may be subject to an accuracy-related penalty under section 6662 unless the position is disclosed in a disclosure statement included in the return. S also documents the fact that this advice was contemporaneously provided to the corporate taxpayer at the time the advice was provided. Neither S nor any other at-

torney within S's firm signs the corporate taxpayer's return as a tax return preparer, but the advice by S constitutes preparation of a substantial portion of the tax return, and S is the individual with overall supervisory responsibility for the position giving rise to the understatement. Thus, S is a tax return preparer for purposes of section 6694. S, however, will not be subject to a penalty under section 6694.

(e) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if, considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the tax return preparer acted in good faith. Factors to consider include:

(1) *Nature of the error causing the understatement.* The error resulted from a provision that was complex, uncommon, or highly technical, and a competent tax return preparer of tax returns or claims for refund of the type at issue reasonably could have made the error. The reasonable cause and good faith exception, however, does not apply to an error that would have been apparent from a general review of the return or claim for refund by the tax return preparer.

(2) *Frequency of errors.* The understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is so obvious, flagrant, or material that it should have been discovered during a review of the return or claim for refund. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* The understatement was not material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

(4) *Tax return preparer's normal office practice.* The tax return preparer's normal office practice, when considered together

with other facts and circumstances, such as the knowledge of the tax return preparer, indicates that the error in question would occur rarely and the normal office practice was followed in preparing the return or claim for refund in question. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims for refund and generally would include, in the case of a signing tax return preparer, checklists, methods for obtaining necessary information from the taxpayer, a review of the prior year's return, and review procedures. Notwithstanding these rules, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims for refund.

(5) *Reliance on advice of others.* For purposes of demonstrating reasonable cause and good faith, a tax return preparer may rely without verification upon advice and information furnished by the taxpayer and information and advice furnished by another advisor, another tax return preparer or other party, as provided in §1.6694-1(e). The tax return preparer may rely in good faith on the advice of, or schedules or other documents prepared by, the taxpayer, another advisor, another tax return preparer, or other party (including another advisor or tax return preparer at the tax return preparer's firm), who the tax return preparer had reason to believe was competent to render the advice or other information. The advice or information may be written or oral, but in either case the burden of establishing that the advice or information was received is on the tax return preparer. A tax return preparer is not considered to have relied in good faith if—

(i) The advice or information is unreasonable on its face;

(ii) The tax return preparer knew or should have known that the other party providing the advice or information was not aware of all relevant facts; or

(iii) The tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the advice or information was no longer reliable due to developments

in the law since the time the advice was given.

(6) *Reliance on generally accepted administrative or industry practice.* The tax return preparer reasonably relied in good faith on generally accepted administrative or industry practice in taking the position that resulted in the understatement. A tax return preparer is not considered to have relied in good faith if the tax return preparer knew or should have known (given the nature of the tax return preparer's practice), at the time the return or claim for refund was prepared, that the administrative or industry practice was no longer reliable due to developments in the law or IRS administrative practice since the time the practice was developed.

(f) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 8. Section 1.6694-3 is amended by revising paragraphs (a), (c)(2) and (3), (d), (e), (f), and (g) to read as follows:

§1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general—(1) Proscribed conduct.* A tax return preparer is liable for a penalty under section 6694(b) equal to the greater of \$5,000 or 50 percent of the income derived (or to be derived) by the tax return preparer if any part of an understatement of liability for a return or claim for refund that is prepared is due to—

(i) A willful attempt by a tax return preparer to understate in any manner the liability for tax on the return or claim for refund; or

(ii) Any reckless or intentional disregard of rules or regulations by a tax return preparer.

(2) *Special rule for corporations, partnerships, and other firms.* A firm that employs a tax return preparer subject to a penalty under section 6694(b) (or a firm of which the individual tax return preparer is a partner, member, shareholder or other equity holder) is also subject to penalty if, and only if—

(i) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or knew of the conduct proscribed by section 6694(b);

(ii) The corporation, partnership, or other firm entity failed to provide reasonable and appropriate procedures for review of the position for which the penalty is imposed; or

(iii) The corporation, partnership, or other firm entity disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the formulation of the advice, or the preparation of the return or claim for refund, that included the position for which the penalty is imposed.

* * * * *

(c) * * *

(2) A tax return preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation has a reasonable basis as defined in §1.6694-2(d)(2) and is adequately disclosed in accordance with §§1.6694-2(d)(3)(i)(A) or (C) or 1.6694-2(d)(3)(ii). In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation and, when disclosed in accordance with §§1.6694-2(d)(3)(i)(A) or (C) or 1.6694-2(d)(3)(ii), the tax return preparer must identify the regulation being challenged. For purposes of this section, disclosure on the return in accordance with an annual revenue procedure under §1.6662-4(f)(2) is not applicable.

(3) In the case of a position contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) published by the Internal Revenue Service in the Internal Revenue Bulletin, a tax return preparer also is not considered to have recklessly or intentionally disregarded the ruling or notice if the position meets the substantial authority standard described in §1.6662-4(d) and is not with respect to a reportable transaction to which section 6662A applies.

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples:

Example 1. A taxpayer provided Preparer T with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this expense was identified as personal on the check register. T knowingly deducted the ex-

penses of the taxpayer's domestic help as wages paid in the taxpayer's business. T is subject to the penalty under section 6694(b).

Example 2. A taxpayer provided Preparer U with detailed check registers to compute the taxpayer's expenses. U, however, knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because U disregarded information provided in the check registers, U is subject to the penalty under section 6694(b).

Example 3. Preparer V prepares a taxpayer's return in 2009 and encounters certain expenses incurred in the purchase of a business. Final regulations provide that such expenses incurred in the purchase of a business must be capitalized. One U.S. Tax Court case decided in 2006 has expressly invalidated that portion of the regulations. There are no courts that ruled favorably with respect to the validity of that portion of the regulations and there are no other authorities existing on the issue. Under these facts, V will have a reasonable basis for the position as defined in §1.6694-2(d)(2) and will not be subject to the section 6694(b) penalty if the position is adequately disclosed in accordance with paragraph (c)(2) of this section because the position represents a good faith challenge to the validity of the regulations.

(e) *Rules or regulations.* The term *rules or regulations* includes the provisions of the Internal Revenue Code (Code), temporary or final Treasury regulations issued under the Code, and revenue rulings or notices (other than notices of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin.

(f) *Section 6694(b) penalty reduced by section 6694(a) penalty.* The amount of any penalty to which a tax return preparer may be subject under section 6694(b) for a return or claim for refund is reduced by any amount assessed and collected against the tax return preparer under section 6694(a) for the same position on a return or claim for refund.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 9. Section 1.6694-4 is revised to read as follows:

§1.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* (1) The Internal Revenue Service (IRS) will investigate the preparation by a tax return preparer of a return of tax under the Internal Rev-

enue Code (Code) or claim for refund of tax under the Code as described in §301.7701-15(b)(4) of this chapter, and will send a report of the examination to the tax return preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which either it was not reasonable to believe that the position would more likely than not be sustained on its merits under section 6694(a) or no substantial authority, as applicable (or not a reasonable basis for disclosed positions); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

(2) Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the IRS will also send, before assessment of either penalty, a 30-day letter to the tax return preparer notifying him of the proposed penalty or penalties and offering an opportunity to the tax return preparer to request further administrative consideration and a final administrative determination by the IRS concerning the assessment. If the tax return preparer then makes a timely request, assessment may not be made until the IRS makes a final administrative determination adverse to the tax return preparer.

(3) If the IRS assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the tax return preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(4) Within 30 days after the day on which notice and demand of either of the two penalties described in section 6694(a) and section 6694(b) is made against the tax return preparer, the tax return preparer must either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or claim for refund and file a claim for refund of the amount paid.

(5) If the tax return preparer pays an amount and files a claim for refund under

paragraph (a)(4)(ii) of this section, the IRS may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of—

(i) A date which is more than 30 days after the earlier of—

(A) The day on which the tax return preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the tax return preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

(6) The IRS may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount assessed. Final resolution of a proceeding includes any settlement between the IRS and the tax return preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the IRS in contravention of paragraph (a)(5) of this section may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty.* The IRS may proceed with collection of the amount of the penalty not paid under paragraph (a)(4)(ii) of this section if the preparer fails to begin a proceeding for refund in the appropriate United States district court within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(4)(ii) of this section is denied; or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund.

(c) *Suspension of running of period of limitations on collection.* The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) is suspended for the period during which the IRS, under paragraph (a)(5) of this section, may not collect the unpaid amount

of the penalty or penalties by levy or a proceeding in court.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 10. Section 1.6695-1 is revised to read as follows:

§1.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *Failure to furnish copy to taxpayer.* (1) A person who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter of any return of tax or claim for refund of tax under the Internal Revenue Code (Code), and who fails to satisfy the requirements imposed by section 6107(a) and §1.6107-1(a) to furnish a copy of the return or claim for refund to the taxpayer (or nontaxable entity), shall be subject to a penalty of \$50 for such failure, with a maximum penalty of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No penalty may be imposed under section 6695(a) and paragraph (a)(1) of this section upon a tax return preparer who furnishes a copy of the return or claim for refund to taxpayers who—

(i) Hold an elected or politically appointed position with the government of the United States or a state or political subdivision thereof; and

(ii) In order faithfully to carry out their official duties, have so arranged their affairs that they have less than full knowledge of the property that they hold or of the debts for which they are responsible, if information is deleted from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.* (1) An individual who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter with respect to a return of tax or claim for refund of tax under the Code as described in §301.7701-15(b)(4) that is not signed electronically shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. For rules covering electronically signed returns, see paragraph (b)(2) of this section.

If the signing tax return preparer is unavailable for signature, another tax return preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund. The tax return preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) In the case of electronically signed tax returns, the signing tax return preparer need not sign the return prior to presenting a completed copy of the return to the taxpayer. The signing tax return preparer, however, must furnish all of the information that will be transmitted as the electronically signed tax return to the taxpayer contemporaneously with furnishing the Form 8879, "IRS e-file Signature Authorization," or other similar Internal Revenue Service (IRS) e-file signature form. The information may be furnished on a replica of an official form. The signing tax return preparer shall electronically sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(3) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of \$50 for each failure to sign, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. If the tax return preparer asserts reasonable cause for failure to sign, the IRS will require a written statement to substantiate the tax return preparer's claim of reasonable cause. For purposes of this paragraph (b), reasonable cause is a cause that arises despite ordinary care and prudence exercised by the individual tax return preparer.

(4) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

Example 1. Law Firm A employs B, a lawyer, to prepare for compensation estate tax returns and claims for refund of taxes. Firm A is engaged by C to prepare a Federal estate tax return. Firm A assigns B to prepare the return. B obtains the information necessary for completing the return from C and makes determinations with respect to the proper application of the tax laws to such information in order to determine the estate's tax liability. B then forwards such information to D, a computer tax service that performs the mathematical computations and prints the return by means of computer processing. D then sends the completed estate tax return to B who reviews the accuracy of the return. B is the individual

tax return preparer who is primarily responsible for the overall accuracy of the estate tax return. B must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 2. Partnership E is a national accounting firm that prepares returns and claims for refund of taxes for compensation. F and G, employees of Partnership E, are involved in preparing the Form 990-T, *Exempt Organization Business Income Tax Return*, for H, a tax exempt organization. After they complete the return, including the gathering of the necessary information, analyzing the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, I, a supervisory employee of Partnership E, reviews the return. As part of this review, I reviews the information provided and the application of the tax laws to this information. The mathematical computations and carried-forward amounts are reviewed by J, an employee of Partnership E. The policies and practices of Partnership E require that K, a partner, finally review the return. The scope of K's review includes reviewing the information provided and applying to this information his knowledge of H's affairs, observing that Partnership E's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine H's tax liability. K may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the return, his confidence in I (or F and G), and other factors. K is the individual tax return preparer who is primarily responsible for the overall accuracy of H's return. K must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 3. L corporation maintains an office in Seattle, Washington, for the purpose of preparing partnership returns for compensation. L makes compensatory arrangements with individuals (but provides no working facilities) in several states to collect information from partners of a partnership and to make decisions with respect to the proper application of the tax laws to the information in order to prepare the partnership return and calculate the partnership's distributive items. M, an individual, who has such an arrangement in Los Angeles with L, collects information from N, the general partner of a partnership, and completes a worksheet kit supplied by L that is stamped with M's name and an identification number assigned to M by L. In this process, M classifies this information in appropriate categories for the preparation of the partnership return. The completed worksheet kit signed by M is then mailed to L. O, an employee in L's office, reviews the worksheet kit to make sure it was properly completed. O does not review the information obtained from N for its validity or accuracy. O may, but did not, make the final decision with respect to the proper application of tax laws to the information provided. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to N with filing instructions. M is the individual tax return preparer primarily responsible for the overall accuracy of the partnership return. M must sign the return as tax return preparer in order to not be subject to the section 6695(b) penalty.

Example 4. P employs R, S, and T to prepare gift tax returns for taxpayers. After R and S have col-

lected the information from a taxpayer and applied the tax laws to the information, the return form is completed by a computer service. On the day the returns prepared by R and S are ready for their signatures, R is away from the city for 1 week on another assignment and S is on detail to another office in the same city for the day. T may sign the gift tax returns prepared by R, provided that T reviews the information obtained by R relative to the taxpayer, and T reviews the preparation of each return prepared by R. T may not sign the returns prepared by S because S is available.

(5) *Effective/applicability date.* This paragraph (b) is applicable to returns and claims for refund filed after December 31, 2008.

(c) *Failure to furnish identifying number.* (1) A person who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirement of section 6109(a)(4) and §1.6109-2(a) to furnish one or more identifying numbers of signing tax return preparers or persons employing the signing tax return preparer (or with which the signing tax return preparer is associated) on a return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature shall be subject to a penalty of \$50 for each failure, with a maximum of \$25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(2) No more than one penalty of \$50 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

(d) *Failure to retain copy or record.* (1) A person who is a signing tax return preparer as described in §301.7701-15(b)(1) of this chapter of any return of tax under the Code or claim for refund of tax under the Code, and who fails to satisfy the requirements imposed upon him or her by section 6107(b) and §1.6107-1(b) and (c) (other than the record requirement described in both §1.6107-1(b)(2) and (3)) to retain and make available for inspection a copy of the return or claim for refund, or to include the return or claim for refund in a record of returns and claims for refund and make the record available for inspection, shall be subject to a penalty of \$50 for the failure, unless it is shown that the fail-

ure is due to reasonable cause and not due to willful neglect.

(2) A person may not, for returns or claims for refund presented to the taxpayers (or nontaxable entities) during each calendar year, be subject to more than \$25,000 in penalties under section 6695(d) and paragraph (d)(1) of this section.

(e) *Failure to file correct information returns.* A person who is subject to the reporting requirements of section 6060 and §1.6060-1 and who fails to satisfy these requirements shall pay a penalty of \$50 for each such failure, with a maximum of \$25,000 per person imposed for each calendar year, unless such failure was due to reasonable cause and not due to willful neglect.

(f) *Negotiation of check.* (1) No person who is a tax return preparer as described in §301.7701-15 of this chapter may endorse or otherwise negotiate, directly or through an agent, a check (including an electronic version of a check) for the refund of tax under the Code that is issued to a taxpayer other than the tax return preparer if the person was a tax return preparer of the return or claim for refund which gave rise to the refund check. A tax return preparer will not be considered to have endorsed or otherwise negotiated a check for purposes of this paragraph (f)(1) solely as a result of having affixed the taxpayer's name to a refund check for the purpose of depositing the check into an account in the name of the taxpayer or in the joint names of the taxpayer and one or more other persons (excluding the tax return preparer) if authorized by the taxpayer or the taxpayer's recognized representative.

(2) Section 6695(f) and paragraphs (f)(1) and (3) of this section do not apply to a tax return preparer-bank that—

(i) Cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit in full to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund); or

(ii) Endorses a refund check for deposit in full to a taxpayer's account pursuant to a written authorization of the taxpayer (unless the bank has made a loan to the taxpayer on the basis of the anticipated refund).

(3) A tax return preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(4) The tax return preparer shall be subject to a penalty of \$500 for each endorsement or negotiation of a check prohibited under section 6695(f) and paragraph (f)(1) of this section.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 11. Section 1.6695-2 is amended by revising the section heading and paragraphs (a), (b)(3), (c) and (d) to read as follows:

§1.6695-2 Tax return preparer due diligence requirements for determining earned income credit eligibility.

(a) *Penalty for failure to meet due diligence requirements.* A person who is a signing tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of \$100 for each such failure.

(b) * * *

(3) *Knowledge—(i) In general.* The tax return preparer must not know, or have reason to know, that any information used by the tax return preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The tax return preparer may not ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. A tax return preparer must make reasonable inquiries if a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that the information furnished to the tax return preparer appears to be incorrect, inconsistent, or incomplete. The tax return preparer must also contemporaneously document in the files the reasonable inquiries made and the responses to these inquiries.

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section are illustrated by the following examples:

Example 1. A 22 year-old taxpayer wants to claim two sons, ages 10 and 11, as qualifying children for purposes of the EIC. Preparer A must make additional reasonable inquiries regarding the relationship between the taxpayer and the children as the age of the taxpayer appears inconsistent with the ages of the children claimed as sons.

Example 2. An 18 year-old female taxpayer with an infant has \$3,000 in earned income and states that she lives with her parents. Taxpayer wants to claim the infant as a qualifying child for the EIC. This information appears incomplete and inconsistent because the taxpayer lives with her parents and earns very little income. Preparer B must make additional reasonable inquiries to determine if the taxpayer is the qualifying child of her parents and, therefore, ineligible to claim the EIC.

Example 3. Taxpayer asks Preparer C to prepare his tax return and wants to claim his niece and nephew as qualifying children for the EIC. Preparer C should make reasonable inquiries to determine whether the children meet EIC qualifying child requirements and ensure possible duplicate claim situations involving the parents or other relatives are properly considered.

Example 4. Taxpayer asks Preparer D to prepare her tax return and tells D that she has a Schedule C business, that she has two qualifying children and that she wants to claim the EIC. Taxpayer indicates that she earned \$10,000 from her Schedule C business, but that she has no expenses. This information appears incomplete because it is very unlikely that someone who is self-employed has no business expenses. D must make additional reasonable inquiries regarding taxpayer's business to determine whether the information regarding both income and expenses is correct.

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the Internal Revenue Service that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 12. Section 1.6696-1 is revised to read as follows:

§1.6696-1 Claims for credit or refund by tax return preparers or appraisers.

(a) *Notice and demand.* (1) The Internal Revenue Service (IRS) shall issue to each tax return preparer or appraiser one or more statements of notice and demand for payment for all penalties assessed against the tax return preparer or appraiser under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) For the definition of the term “tax return preparer”, see section 7701(a)(36) and §301.7701-15 of this chapter. A person who prepares a claim for credit or refund under this section for another person, however, is not, with respect to that preparation, a tax return preparer as defined in section 7701(a)(36) and §301.7701-15 of this chapter.

(b) *Claim filed by tax return preparer or appraiser.* A claim for credit or refund of a penalty (or penalties) assessed against a tax return preparer or appraiser under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations) may be filed under this section only by the tax return preparer or the appraiser (or the tax return preparer’s or appraiser’s estate) against whom the penalty (or penalties) is assessed and not by, for example, the tax return preparer’s or appraiser’s employer. This paragraph (b) is not intended, however, to impose any restrictions on the preparation of this claim for credit or refund. The claim may be prepared by the tax return preparer’s or appraiser’s employer or by other persons. In all cases, however, the claim for credit or refund shall contain the information specified in paragraph (d) of this section and, as required by paragraph (d) of this section, shall be verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury.

(c) *Separation and consolidation of claims.* (1) Unless paragraph (c)(2) of this section applies, a tax return preparer shall file a separate claim for each penalty assessed in each statement of notice and demand issued to the tax return preparer.

(2) A tax return preparer may file one or more consolidated claims for any or all penalties imposed on the tax return

preparer by a single IRS campus or office under section 6695(a) and §1.6695-1(a) (relating to failure to furnish copy of return to taxpayer), section 6695(b) and §1.6695-1(b) (relating to failure to sign), section 6695(c) and §1.6695-1(c) (relating to failure to furnish identifying number), or under section 6695(d) and §1.6695-1(d) (relating to failure to retain copy of return or record), whether the penalties are asserted on a single or on separate statements of notice and demand. In addition, a tax return preparer may file one consolidated claim for any or all penalties imposed on the tax return preparer by a single IRS campus or office under section 6695(e) and §1.6695-1(e) (relating to failure to file correct information return), which are asserted on a single statement of notice and demand.

(d) *Content of claim.* Each claim for credit or refund for any penalty (or penalties) paid by a tax return preparer under section 6694 and §1.6694-1, or under section 6695 and §1.6695-1, or paid by an appraiser under section 6695A (and any subsequently issued regulations) shall include the following information, verified by a written declaration by the tax return preparer or appraiser that the information is provided under penalty of perjury:

(1) The tax return preparer’s or appraiser’s name.

(2) The tax return preparer’s or appraiser’s identification number. If the tax return preparer or appraiser is—

(i) An individual (not described in paragraph (d)(2)(iii) of this section) who is a citizen or resident of the United States, the tax return preparer’s or appraiser’s social security account number (or such alternative number as may be prescribed by the IRS in forms, instructions, or other appropriate guidance) shall be provided;

(ii) An individual who is not a citizen or resident of the United States and also was not employed by another tax return preparer or appraiser to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer’s or appraiser’s employer identification number shall be provided; or

(iii) A person (whether an individual, corporation, or partnership) that employed one or more persons to prepare the document (or documents) with respect to which the penalty (or penalties) was assessed, the tax return preparer’s or appraiser’s em-

ployer identification number shall be provided.

(3) The tax return preparer’s or appraiser’s address where the IRS mailed the statement (or statements) of notice and demand and, if different, the tax return preparer’s or appraiser’s address shown on the document (or documents) with respect to which the penalty (or penalties) was assessed.

(4)(i) The address of the IRS campus or office that issued the statement (or statements) of notice and demand for payment of the penalty (or penalties).

(ii) The date (or dates) and identifying number (or numbers) of the statement (or statements) of notice and demand.

(5)(i) The identification, by amount, type, and document to which related, of each penalty included in the claim. Each document referred to in the preceding sentence shall be identified by the form title or number, by the taxpayer’s (or nontaxable entity’s) name and taxpayer identification number, and by the taxable year to which the document relates.

(ii) The date (or dates) of payment of the amount (or amounts) of the penalty (or penalties) included in the claim.

(iii) The total amount claimed.

(6) A statement setting forth in detail—

(i) Each ground upon which each penalty overpayment claim is based; and

(ii) Facts sufficient to apprise the IRS of the exact basis of each such claim.

(e) *Form for filing claim.* Notwithstanding §301.6402-2(c) of this chapter, Form 6118, “*Claim for Refund of Income Tax Return Preparer and Promoter Penalties*,” is the form prescribed for making a claim as provided in this section with respect to penalties under sections 6694 and 6695. Form 843, *Claim for Refund and Request for Abatement*, is the form prescribed for making a claim as provided in this section with respect to a penalty under section 6695A.

(f) *Place for filing claim.* A claim filed under this section shall be filed with the IRS campus or office that issued to the tax return preparer or appraiser the statement (or statements) of notice and demand for payment of the penalty (or penalties) included in the claim.

(g) *Time for filing claim.* (1)(i) Except as provided in section 6694(c)(1) and §1.6694-4(a)(4)(ii) and (5), and in section 6694(d) and §1.6694-1(d):

(A) A claim for a penalty paid by a tax return preparer under section 6694 and §1.6694-1, or under section 6695 and §1.6695-1, or by an appraiser under section 6695A (and any subsequently issued regulations) shall be filed within three years from the date the payment was made.

(B) A consolidated claim, permitted under paragraph (c)(2) of this section, shall be filed within three years from the first date of payment of any penalty included in the claim.

(ii) For purposes of this paragraph (g)(1), payment is considered made on the date payment is received by the IRS or, if applicable, on the date an amount is credited in satisfaction of the penalty.

(2) For purposes of determining whether a claim is timely filed, the rules under sections 7502 and 7503 and the provisions of §§1.7502-1, 1.7502-2, and 1.7503-1 apply.

(h) *Application of refund to outstanding liability of tax return preparer or appraiser.* The IRS may, within the applicable period of limitations, credit any amount of an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations) against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the tax return preparer or appraiser making the overpayment. If a portion of an overpayment is so credited, only the balance will be refunded to the tax return preparer or appraiser.

(i) *Interest.* (1) Section 6611 and §301.6611-1 of this chapter apply to the payment by the IRS of interest on an overpayment by a tax return preparer or appraiser of a penalty (or penalties) paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(2) Section 6601 and §301.6601-1 of this chapter apply to the payment of interest by a tax return preparer or appraiser to the IRS on any penalty (or penalties) assessed against the tax return preparer under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(j) *Suits for refund of penalty.* (1) A tax return preparer or appraiser may not maintain a civil action for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations), unless the tax return preparer or appraiser has previously filed a claim for credit or refund of the penalty as provided in this section (and the court has jurisdiction of the proceeding). See sections 6694(c) and 7422.

(2)(i) Except as provided in section 6694(c)(2) and §1.6694-4(b), the periods of limitation contained in section 6532 and §301.6532-1 of this chapter apply to a tax return preparer's or appraiser's suit for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(ii) The rules under section 7503 and §301.7503-1 of this chapter apply to the timely commencement by a tax return preparer or appraiser of a suit for the recovery of any penalty paid under section 6694 and §1.6694-1, under section 6695 and §1.6695-1, or under section 6695A (and any subsequently issued regulations).

(k) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 13. The authority citation for part 20 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 20.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 20.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 20.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 14. Section 20.6060-1 is added to read as follows:

§20.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of estate tax under chapter 11 of subtitle B of the

Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 15. Section 20.6107-1 is added to read as follows:

§20.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 16. Section 20.6109-1 is added to read as follows:

§20.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each estate tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 17. Section 20.6694-1 is added to read as follows:

§20.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of estate tax returns or claims for refund see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to re-

turns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 18. Section 20.6694-2 is added to read as follows:

§20.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 19. Section 20.6694-3 is added to read as follows:

§20.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 20. Section 20.6694-4 is added to read as follows:

§20.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of the period of collection when a tax return preparer who prepared a return or claim for refund for estate tax under chapter 11 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of the taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under sections 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 21. Section 20.6695-1 is added to read as follows:

§20.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of estate tax under chapter 11 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 22. Section 20.6696-1 is added to read as follows:

§20.6696-1 Claims for credit or refund by tax return preparers or appraisers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for estate tax under chapter 11 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 23. Section 20.7701-1 is added to read as follows:

§20.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 24. The authority citation for part 25 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 25.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 25.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 25.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 25. Section 25.6060-1 is added to read as follows:

§25.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 26. Section 25.6107-1 is added to read as follows:

§25.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 27. Section 25.6109-1 is added to read as follows:

§25.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each gift tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 28. Section 25.6694-1 is added to read as follows:

§25.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of gift tax returns or claims for refund, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 29. Section 25.6694-2 is added to read as follows:

§25.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 30. Section 25.6694-3 is added to read as follows:

§25.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section

6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 31. Section 25.6694-4 is added to read as follows:

§25.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules for the extension of period of collection when a tax return preparer who prepared a return or claim for refund for gift tax under chapter 12 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 32. Section 25.6695-1 is added to read as follows:

§25.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of gift tax under chapter 12 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 33. Section 25.6696-1 is added to read as follows:

§25.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for gift tax under chapter 12 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 34. Section 25.7701-1 is added to read as follows:

§25.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Par. 35. The authority citation for part 26 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 26.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 26.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 26.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 36. Section 26.6060-1 is added to read as follows:

§26.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code,

other than for the person, at any time during a return period, shall satisfy the record-keeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 37. Section 26.6107-1 is added to read as follows:

§26.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 38. Section 26.6109-1 is added to read as follows:

§26.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each generation-skipping transfer tax return or claim for refund prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 39. Section 26.6694-1 is added to read as follows:

§26.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of generation-skipping transfer tax returns or claims for refund see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to re-

turns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 40. Section 26.6694-2 is added to read as follows:

§26.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 41. Section 26.6694-3 is added to read as follows:

§26.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 42. Section 26.6694-4 is added to read as follows:

§26.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section

6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 43. Section 26.6695-1 is added to read as follows:

§26.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 44. Section 26.6696-1 is added to read as follows:

§26.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code, or by an appraiser that prepared an appraisal in connection with such a return or claim for refund under section 6695A, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 45. Section 26.7701-1 is added to read as follows:

§26.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 31—EMPLOYMENT TAXES
AND COLLECTION OF INCOME TAX
AT THE SOURCE

Par. 46. The authority citation for part 31 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 31.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 31.6109-2 also issued under 26 U.S.C. 6109(a). * * *

Section 31.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 47. Section 31.6060-1 is added to read as follows:

§31.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 48. Section 31.6107-1 is added to read as follows:

§31.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 49. Section 31.6109-2 is added to read as follows:

§31.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each employment tax return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 50. Section 31.6694-1 is added to read as follows:

§31.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of employment tax returns or claims for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 51. Section 31.6694-2 is added to read as follows:

§31.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 52. Section 31.6694-3 is added to read as follows:

§31.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 53. Section 31.6694-4 is added to read as follows:

§31.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 54. Section 31.6695-1 is added to read as follows:

§31.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the

Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 55. Section 31.6696-1 is added to read as follows:

§31.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for employment tax under chapters 21 through 25 of subtitle C of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 56. Section 31.7701-1 is added to read as follows:

§31.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

**PART 40—EXCISE TAX
PROCEDURAL REGULATIONS**

Par. 57. The authority citation for part 40 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 40.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 40.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 58. Section 40.6060-1 is added to read as follows:

§40.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of any tax to which this part 40 applies other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 59. Section 40.6107-1 is added to read as follows:

§40.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 60. Section 40.6109-1 is added to read as follows:

§40.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each return or claim for refund of any tax to which this part 40 applies prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 61. Section 40.6694-1 is added to read as follows:

§40.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applica-

ble to preparers of returns or claims for refund of any tax to which this part 40 applies, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 62. Section 40.6694-2 is added to read as follows:

§40.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall be subject to penalties under section 6694(a) in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 63. Section 40.6694-3 is added to read as follows:

§40.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall be subject to penalties under section 6694(b) in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 64. Section 40.6694-4 is added to read as follows:

§40.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund of any tax to which this part 40 applies pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b),

the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 65. Section 40.6695-1 is added to read as follows:

§40.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons..

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of any tax to which this part 40 applies shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Internal Revenue Code (Code), failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 66. Section 40.6696-1 is added to read as follows:

§40.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* The rules under §1.6696-1 of this chapter will apply for claims for credit or refund by a tax return preparer who prepared a return or claim for refund of any tax to which this part 40 applies.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 67. Section 40.7701-1 is added to read as follows:

§40.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims

for refund filed, and advice provided, after December 31, 2008.

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

Par. 68. The authority citation for part 41 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 41.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 41.6109-2 also issued under 26 U.S.C. 6109(a). * * *

Section 41.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 69. Section 41.6060-1 is added to read as follows:

§41.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of excise tax under section 4481, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 70. Section 41.6107-1 is added to read as follows:

§41.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of excise tax under section 4481 shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 71. Section 41.6109-2 is added to read as follows:

§41.6109-2 Tax return preparers furnishing identifying numbers for returns

or claims for refund filed after December 31, 2008.

(a) *In general.* Each excise tax return or claim for refund under section 4481 prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 72. Section 41.6694-1 is added to read as follows:

§41.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 73. Section 41.6694-2 is added to read as follows:

§41.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 shall be subject to penalties under section 6694(a) in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 74. Section 41.6694-3 is added to read as follows:

§41.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 shall be subject to penalties under section 6694(b) in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims

for refund filed, and advice provided, after December 31, 2008.

Par. 75. Section 41.6694-4 is added to read as follows:

§41.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under section 4481 pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 76. Section 41.6695-1 is added to read as follows:

§41.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under section 4481 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign a return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 77. Section 41.6696-1 is added to read as follows:

§41.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under section 4481, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 78. Section 41.7701-1 is added to read as follows:

§41.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 44—TAXES ON WAGERING; EFFECTIVE JANUARY 1, 1955

Par. 79. The authority citation for part 44 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 44.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 44.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 44.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 80. Section 44.6060-1 is added to read as follows:

§44.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of tax on wagers under sections 4401 or 4411, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 81. Section 44.6107-1 is added to read as follows:

§44.6107-1 Tax return preparer must furnish copy of return to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 82. Section 44.6109-1 is added to read as follows:

§44.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund of tax under sections 4401 or 4411 prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable for returns and claims for refund filed after December 31, 2008.

Par. 83. Section 44.6694-1 is added to read as follows:

§44.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of wagering tax returns or claims for refund under sections 4401 or 4411, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 84. Section 44.6694-2 is added to read as follows:

§44.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401

or 4411 shall be subject to penalties under section 6694(a) in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 85. Section 44.6694-3 is added to read as follows:

§44.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections 4401 or 4411 shall be subject to penalties under section 6694(b) in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 86. Section 44.6694-4 is added to read as follows:

§44.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or 4411 pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 87. Section 44.6695-1 is added to read as follows:

§44.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax on wagers under sections

4401 or 4411 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 88. Section 44.6696-1 is added to read as follows:

§44.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax on wagers under sections 4401 or 4411, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 89. Section 44.7701-1 is added to read as follows:

§44.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 90. The authority citation for part 53 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 53.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 53.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 53.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 91. Section 53.6060-1 is added to read as follows:

§53.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of tax under Chapter 42 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record-keeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 92. Section 53.6107-1 is added to read as follows:

§53.6107-1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 93. Section 53.6109-1 is added to read as follows:

§53.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund filed.

(a) *In general.* Each tax return or claim for refund under Chapter 42 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 94. Section 53.6694-1 is added to read as follows:

§53.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund under Chapter 42 of the Internal Revenue Code, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 95. Section 53.6694-2 is added to read as follows:

§53.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 96. Section 53.6694-3 is added to read as follows:

§53.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 97. Section 53.6694-4 is added to read as follows:

§53.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement

of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund of tax under Chapter 42 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 98. Section 53.6695-1 is added to read as follows:

§53.6695-1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under Chapter 42 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 99. Section 53.6696-1 is added to read as follows:

§53.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under Chapter 42 of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims

for refund filed, and advice provided, after December 31, 2008.

Par. 100. Section 53.7701-1 is added to read as follows:

§53.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 54—PENSION EXCISE TAXES

Par. 101. The authority citation for part 54 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 54.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 54.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 102. Section 54.6060-1 is added to read as follows:

§54.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund under Chapter 43 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 103. Section 54.6107-1 is added to read as follows:

§54.6107-1 Tax return preparer must furnish copy of return or claims for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 43 of subtitle D of the Internal Revenue Code, shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in

the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 104. Section 54.6109-1 is added to read as follows:

§54.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund filed.

(a) *In general.* Each tax return or claim for refund of tax under Chapter 43 of subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 105. Section 54.6694-1 is added to read as follows:

§54.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under Chapter 43 of subtitle D, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 106. Section 54.6694-2 is added to read as follows:

§54.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 107. Section 54.6694-3 is added to read as follows:

§54.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 108. Section 54.6694-4 is added to read as follows:

§54.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under chapter 43 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability, and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 109. Section 54.6695-1 is added to read as follows:

§54.6695-1 Other assessable penalties with respect to the preparation of tax returns for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 43 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct

information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 110. Section 54.6696-1 is added to read as follows:

§54.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for excise tax under chapter 43 of subtitle D of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 111. Section 54.7701-1 is added to read as follows:

§54.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 55—EXCISE TAX ON REAL ESTATE INVESTMENT TRUSTS AND REGULATED INVESTMENT COMPANIES

Par. 112. The authority citation for part 55 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 55.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 55.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 55.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 113. Section 55.6060-1 is added to read as follows:

§55.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare

a return or claim for refund under chapter 44 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 114. Section 55.6107-1 is added to read as follows:

§55.6107-1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 44 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer, and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 115. Section 55.6109-1 is added to read as follows:

§55.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund of tax under chapter 44 of Subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 116. Section 55.6694-1 is added to read as follows:

§55.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for

refund of tax under chapter 44 of Subtitle D, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 117. Section 55.6694-2 is added to read as follows:

§55.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 118. Section 55.6694-3 is added to read as follows:

§55.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 119. Section 55.6694-4 is added to read as follows:

§55.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for excise tax under chapter 44 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of

the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 120. Section 55.6695-1 is added to read as follows:

§55.6695-1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 44 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 121. Section 55.6696-1 is added to read as follows:

§55.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under chapter 44 of subtitle D of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 122. Section 55.7701-1 is added to read as follows:

§55.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 56—PUBLIC CHARITY EXCISE TAXES

Par. 123. The authority citation for part 56 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 56.6060-1 also issued under 26 U.S.C. 6060(a). * * *

Section 56.6109-1 also issued under 26 U.S.C. 6109(a). * * *

Section 56.6695-1 also issued under 26 U.S.C. 6695(b). * * *

Par. 124. Section 56.6060-1 is added to read as follows:

§56.6060-1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 125. Section 56.6107-1 is added to read as follows:

§56.6107-1 Tax return preparer must furnish copy of return and claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under Chapter 41 of subtitle D of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the public charity and retain a completed copy or record in the manner stated in §1.6107-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 126. Section 56.6109-1 is added to read as follows:

§56.6109-1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund for tax under chapter 41 of subtitle D prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695-1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109-2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 127. Section 56.6694-1 is added to read as follows:

§56.6694-1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund of tax under chapter 41 of subtitle D, see §1.6694-1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 128. Section 56.6694-2 is added to read as follows:

§56.6694-2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of excise tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694-2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 129. Section 56.6694-3 is added to read as follows:

§56.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties under section

6694(b) of the Code in the manner stated in §1.6694-3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 130. Section 56.6694-4 is added to read as follows:

§56.6694-4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under chapter 41 of subtitle D of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 131. Section 56.6695-1 is added to read as follows:

§56.6695-1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under chapter 41 of subtitle D of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 132. Section 56.6696–1 is added to read as follows:

§56.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules relating to claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under chapter 41 of subtitle D of the Internal Revenue Code, the rules under §1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 133. Section 56.7701–1 is added to read as follows:

§56.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 156—EXCISE TAX ON GREENMAIL

Par. 134. The authority citation for part 156 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 156.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 156.6109–1 also issued under 26 U.S.C. 6109(a). * * *

Section 156.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Par. 135. Section 156.6060–1 is added to read as follows:

§156.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund under section 5881 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the recordkeeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 136. Section 156.6107–1 is added to read as follows:

§156.6107–1 Tax return preparer must furnish copy of return and claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 137. Section 156.6109–1 is added to read as follows:

§156.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund for tax under section 5881 of the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 138. Section 156.6694–1 is added to read as follows:

§156.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund for tax under section 5881 of the Internal Revenue Code, see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 139. Section 156.6694–2 is added to read as follows:

§156.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 140. Section 156.6694–3 is added to read as follows:

§156.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 141. Section 156.6694–4 is added to read as follows:

§156.6694–4 Extension of period of collection when tax return preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under section 5881 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694–4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 142. Section 156.6695–1 is added to read as follows:

§156.6695–1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5881 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 143. Section 156.6696–1 is added to read as follows:

§156.6696–1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under section 5881 of the Internal Revenue Code, the rules under §1.6696–1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 144. Section 156.7701–1 is added to read as follows:

§156.7701–1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701–15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 157—EXCISE TAX ON STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Par. 145. The authority citation for part 157 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 157.6060–1 also issued under 26 U.S.C. 6060(a). * * *

Section 157.6109–1 also issued under 26 U.S.C. 6109(a). * * *

Section 157.6695–1 also issued under 26 U.S.C. 6695(b). * * *

Par. 146. Section 157.6060–1 is added to read as follows:

§157.6060–1 Reporting requirements for tax return preparers.

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund for tax under section 5891 of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record-keeping and inspection requirements in the manner stated in §1.6060–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 147. Section 157.6107–1 is added to read as follows:

§157.6107–1 Tax return preparer must furnish copy of return or claim for refund to taxpayer and must retain a copy or record.

(a) *In general.* A person who is a signing tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code shall furnish a completed copy of the return or claim for refund to the taxpayer and retain a completed copy or record in the manner stated in §1.6107–1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 148. Section 157.6109–1 is added to read as follows:

§157.6109–1 Tax return preparers furnishing identifying numbers for returns or claims for refund.

(a) *In general.* Each tax return or claim for refund for tax under section 5891 of

the Internal Revenue Code prepared by one or more signing tax return preparers must include the identifying number of the preparer required by §1.6695–1(b) of this chapter to sign the return or claim for refund in the manner stated in §1.6109–2 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 149. Section 157.6694–1 is added to read as follows:

§157.6694–1 Section 6694 penalties applicable to tax return preparer.

(a) *In general.* For general definitions regarding section 6694 penalties applicable to preparers of tax returns or claims for refund for tax under section 5891 of the Internal Revenue Code, see §1.6694–1 of this chapter.

(b) *Effective/applicability date.* Paragraph (a) of this section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 150. Section 157.6694–2 is added to read as follows:

§157.6694–2 Penalties for understatement due to an unreasonable position.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(a) of the Code in the manner stated in §1.6694–2 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 151. Section 157.6694–3 is added to read as follows:

§157.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties under section 6694(b) of the Code in the manner stated in §1.6694–3 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 152. Section 157.6694-4 is added to read as follows:

§157.6694-4 Extension of period of collection when preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.* For rules relating to the extension of period of collection when a tax return preparer who prepared a return or claim for refund for tax under section 5891 of the Internal Revenue Code pays 15 percent of a penalty for understatement of taxpayer's liability and procedural matters relating to the investigation, assessment and collection of the penalties under section 6694(a) and (b), the rules under §1.6694-4 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 153. Section 157.6695-1 is added to read as follows:

§157.6695-1 Other assessable penalties with respect to the preparation of tax returns or claims for refund for other persons.

(a) *In general.* A person who is a tax return preparer of any return or claim for refund of tax under section 5891 of the Internal Revenue Code (Code) shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a) of the Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c) of the Code, failure to retain a copy or list under section 6695(d) of the Code, failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f) of the Code, in the manner stated in §1.6695-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

Par. 154. Section 157.6696-1 is added to read as follows:

§157.6696-1 Claims for credit or refund by tax return preparers.

(a) *In general.* For rules for claims for credit or refund by a tax return preparer who prepared a return or claim for refund for tax under section 5891 of the Internal Revenue Code, the rules under §1.6696-1 of this chapter will apply.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

Par. 155. Section 157.7701-1 is added to read as follows:

§157.7701-1 Tax return preparer.

(a) *In general.* For the definition of a tax return preparer, see §301.7701-15 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 156. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 157. Section 301.7701-15 is amended to read as follows:

§301.7701-15 Tax return preparer.

(a) *In general.* A tax return preparer is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax under the Internal Revenue Code (Code).

(b) *Definitions—(1) Signing tax return preparer.* A signing tax return preparer is the individual tax return preparer who has the primary responsibility for the overall substantive accuracy of the preparation of such return or claim for refund.

(2) *Nonsigning tax return preparer—(i) In general.* A nonsigning tax return preparer is any tax return preparer who is not a signing tax return preparer but who prepares all or a substantial portion of a return or claim for refund within the meaning of paragraph (b)(3) of this section with respect to events that have occurred at the

time the advice is rendered. In determining whether an individual is a nonsigning tax return preparer, time spent on advice that is given after events have occurred that represents less than 5 percent of the aggregate time incurred by such individual with respect to the position(s) giving rise to the understatement shall not be taken into account. Notwithstanding the preceding sentence, time spent on advice before the events have occurred will be taken into account if all facts and circumstances show that the position(s) giving rise to the understatement is primarily attributable to the advice, the advice was substantially given before events occurred primarily to avoid treating the person giving the advice as a tax return preparer, and the advice given before events occurred was confirmed after events had occurred for purposes of preparing a tax return. Examples of nonsigning tax return preparers are tax return preparers who provide advice (written or oral) to a taxpayer (or to another tax return preparer) when that advice leads to a position or entry that constitutes a substantial portion of the return within the meaning of paragraph (b)(3) of this section.

(ii) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Attorney A, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding a completed corporate transaction. The advice provided by A is directly relevant to the determination of an entry on the taxpayer's return, and this advice leads to a position(s) or entry that constitutes a substantial portion of the return. A, however, does not prepare any other portion of the taxpayer's return and is not the signing tax return preparer of this return. A is considered a nonsigning tax return preparer.

Example 2. Attorney B, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding the tax consequences of a proposed corporate transaction. Based upon this advice, the corporate taxpayer enters into the transaction. Once the transaction is completed, the corporate taxpayer does not receive any additional advice from B with respect to the transaction. B did not provide advice with respect to events that have occurred and is not considered a tax return preparer.

Example 3. The facts are the same as *Example 2*, except that Attorney B provides supplemental advice to the corporate taxpayer on a phone call after the transaction is completed. Attorney B did not provide advice before the corporate transaction occurred with the primary intent to avoid being treated as a tax return preparer. The time incurred on this supplemental advice by B represented less than 5 percent of the aggregate amount of time spent by B providing tax advice on the position. B is not considered a tax return preparer.

(3) *Substantial portion.* (i) Only a person who prepares all or a substantial portion of a return or claim for refund shall be considered to be a tax return preparer of the return or claim for refund. A person who renders tax advice on a position that is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund will be regarded as having prepared that entry. Whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion is determined based upon whether the person knows or reasonably should know that the tax attributable to the schedule, entry, or other portion of a return or claim for refund is a substantial portion of the tax required to be shown on the return or claim for refund. A single tax entry may constitute a substantial portion of the tax required to be shown on a return. Factors to consider in determining whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion include but are not limited to—

(A) the size and complexity of the item relative to the taxpayer's gross income; and

(B) the size of the understatement attributable to the item compared to the taxpayer's reported tax liability.

(ii)(A) For purposes of applying the rules of paragraph (b)(3)(i) of this section to a nonsigning tax return preparer within the meaning of paragraph (b)(2) of this section only, the schedule or other portion is not considered to be a substantial portion if the schedule, entry, or other portion of the return or claim for refund involves amounts of gross income, amounts of deductions, or amounts on the basis of which credits are determined that are—

(1) Less than \$10,000; or

(2) Less than \$400,000 and also less than 20 percent of the gross income as shown on the return or claim for refund (or, for an individual, the individual's adjusted gross income).

(B) If more than one schedule, entry or other portion is involved, all schedules, entries or other portions shall be aggregated in applying the *de minimis* rule in paragraph (b)(3)(ii)(A) of this section.

(C) The *de minimis* rule in paragraph (b)(3)(ii)(A) of this section shall not apply to a signing tax return preparer within the meaning of paragraph (b)(1) of this section.

(iii) A tax return preparer with respect to one return is not considered to be a tax return preparer of another return merely because an entry or entries reported on the first return may affect an entry reported on the other return, unless the entry or entries reported on the first return are directly reflected on the other return and constitute a substantial portion of the other return. For example, the sole preparer of a partnership return of income or small business corporation income tax return is considered a tax return preparer of a partner's or a shareholder's return if the entry or entries on the partnership or small business corporation return reportable on the partner's or shareholder's return constitute a substantial portion of the partner's or shareholder's return.

(iv) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

Example 1. Accountant C prepares a Form 8886, "Reportable Transaction Disclosure Statement", that is used to disclose reportable transactions. C does not prepare the tax return or advise the taxpayer regarding the tax return reporting position of the transaction to which the Form 8886 relates. The preparation of the Form 8886 is not directly relevant to the determination of the existence, characterization, or amount of an entry on a tax return or claim for refund. Rather, the Form 8886 is prepared by C to disclose a reportable transaction. C has not prepared a substantial portion of the tax return and is not considered a tax return preparer under section 6694.

Example 2. Accountant D prepares a schedule for an individual taxpayer's Form 1040, "U.S. Individual Income Tax Return", reporting \$4,000 in dividend income and gives oral or written advice about Schedule A, which results in a claim of a medical expense deduction totaling \$5,000, but does not sign the tax return. D is not a nonsigning tax return preparer because the total aggregate amount of the deductions is less than \$10,000.

(4) *Return and claim for refund—(i) Return.* For purposes of this section, a return of tax is a return (including an amended or adjusted return) filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under the Code, if the type of return is identified in published guidance in the Internal Revenue Bulletin. A return of tax also includes any information return or other document identified in published guidance in the Internal Revenue Bulletin and that reports information that is or may be reported on another taxpayer's return under the Code if the information reported on the information return or other document constitutes a substantial portion of the taxpayer's return

within the meaning of paragraph (b)(3) of this section.

(ii) *Claim for refund.* For purposes of this section, a claim for refund of tax includes a claim for credit against any tax that is included in published guidance in the Internal Revenue Bulletin. A claim for refund also includes a claim for payment under section 6420, 6421, or 6427.

(c) *Mechanical or clerical assistance.* A person who furnishes to a taxpayer or other tax return preparer sufficient information and advice so that completion of the return or claim for refund is largely a mechanical or clerical matter is considered a tax return preparer, even though that person does not actually place or review placement of information on the return or claim for refund. See also paragraph (b)(3) of this section.

(d) *Qualifications.* A person may be a tax return preparer without regard to educational qualifications and professional status requirements.

(e) *Outside the United States.* A person who prepares a return or claim for refund outside the United States is a tax return preparer, regardless of the person's nationality, residence, or the location of the person's place of business, if the person otherwise satisfies the definition of *tax return preparer*. Notwithstanding the provisions of §301.6109-1(g), the person shall secure an employer identification number if the person is an employer of another tax return preparer, is a partnership in which one or more of the general partners is a tax return preparer, is a firm in which one or more of the equity holders is a tax return preparer, or is an individual not employed by another tax return preparer.

(f) *Persons who are not tax return preparers.* (1) The following persons are not tax return preparers:

(i) An official or employee of the Internal Revenue Service (IRS) performing official duties.

(ii) Any individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program established by the IRS, but only with respect to those returns prepared as part of the VITA program.

(iii) Any organization sponsoring or administering a VITA program established by the IRS, but only with respect to that sponsorship or administration.

(iv) Any individual who provides tax counseling for the elderly under a program established pursuant to section 163 of the Revenue Act of 1978, but only with respect to those returns prepared as part of that program.

(v) Any organization sponsoring or administering a program to provide tax counseling for the elderly established pursuant to section 163 of the Revenue Act of 1978, but only with respect to that sponsorship or administration.

(vi) Any individual who provides tax assistance as part of a qualified Low-Income Taxpayer Clinic (LITC), as defined by section 7526, subject to the requirements of paragraphs (f)(2) and (3) of this section, but only with respect to those returns and claims for refund prepared as part of the LITC program.

(vii) Any organization that is a qualified LITC, as defined by section 7526, subject to the requirements of paragraphs (f)(2) and (3) of this section.

(viii) An individual providing only typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(ix) An individual preparing a return or claim for refund of a taxpayer, or an officer, a general partner, member, shareholder, or employee of a taxpayer, by whom the individual is regularly and continuously employed or compensated or in which the individual is a general partner.

(x) An individual preparing a return or claim for refund for a trust, estate, or other entity of which the individual either is a fiduciary or is an officer, general partner, or employee of the fiduciary.

(xi) An individual preparing a claim for refund for a taxpayer in response to—

(A) A notice of deficiency issued to the taxpayer; or

(B) A waiver of restriction on assessment after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax.

(xii) A person who prepares a return or claim for refund for a taxpayer with no explicit or implicit agreement for compensation, even if the person receives an insubstantial gift, return service, or favor.

(2) Paragraphs (f)(1)(vi) and (vii) of this section apply only if any assistance with a return of tax or claim for refund is directly related to a controversy with the IRS for which the qualified LITC is providing assistance or is an ancillary part of a LITC program to inform individuals for whom English is a second language about their rights and responsibilities under the Code.

(3) Notwithstanding paragraph (f)(2) of this section, paragraphs (f)(1)(vi) and (f)(1)(vii) of this section do not apply if an LITC charges a separate fee or varies a fee based on whether the LITC provides assistance with a return of tax or claim for refund under the Code or if the LITC charges more than a nominal fee for its services.

(4) For purposes of paragraph (f)(1)(ix) of this section, the employee of a corporation owning more than 50 percent of the voting power of another corporation, or the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation, is considered the employee of the other corporation as well.

(5) For purposes of paragraph (f)(1)(x) of this section, an estate, guardianship, conservatorship, committee, or any similar arrangement for a taxpayer under a legal disability (such as a minor, an incom-

petent, or an infirm individual) is considered a trust or estate.

(6) *Examples.* The mechanical assistance exception described in paragraph (f)(1)(viii) of this section is illustrated by the following examples:

Example 1. A reporting agent received employment tax information from a client from the client's business records. The reporting agent did not render any tax advice to the client or exercise any discretion or independent judgment on the client's underlying tax positions. The reporting agent processed the client's information, signed the return as authorized by the client pursuant to Form 8655, *Reporting Agent Authorization*, and filed the client's return using the information supplied by the client. The reporting agent is not a tax return preparer.

Example 2. A reporting agent rendered tax advice to a client on determining whether its workers are employees or independent contractors for Federal tax purposes. For compensation, the reporting agent received employment tax information from the client, processed the client's information and filed the client's return using the information supplied by the client. The reporting agent is a tax return preparer.

(g) *Effective/applicability date.* This section is applicable to returns and claims for refund filed, and advice provided, after December 31, 2008.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 158. The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 159. In §602.101, paragraph (b) is amended by adding the following entries to the table in numerical order to read in part as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6060-1(a)(1)	1545-1231
1.6107-1	1545-1231
1.6694-2(c)(3)	1545-1231
20.6060-1(a)(1)	1545-1231
20.6107-1	1545-1231
25.6060-1(a)(1)	1545-1231
25.6107-1	1545-1231
26.6060-1(a)(1)	1545-1231
26.6107-1	1545-1231
31.6060-1(a)(1)	1545-1231
31.6107-1	1545-1231
40.6060-1(a)(1)	1545-1231
40.6107-1	1545-1231
41.6060-1(a)(1)	1545-1231
41.6107-1	1545-1231
44.6060-1(a)(1)	1545-1231
44.6107-1	1545-1231
53.6060-1(a)(1)	1545-1231
53.6107-1	1545-1231
54.6060-1(a)(1)	1545-1231
54.6107-1	1545-1231
55.6060-1(a)(1)	1545-1231
55.6107-1	1545-1231
56.6060-1(a)(1)	1545-1231
56.6107-1	1545-1231
156.6060-1(a)(1)	1545-1231
156.6107-1	1545-1231
157.6060-1(a)(1)	1545-1231
157.6107-1	1545-1231
* * * * *	

Linda M. Kroening,
*Acting Deputy Commissioner for
Services and Enforcement.*

Approved December 10, 2008.

Eric Solomon,
*Assistant Secretary of
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on December 15, 2008, 4:15 p.m., and published in the issue of the Federal Register for December 22, 2008, 73 F.R. 78429)

Section 6695.—Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons

Final regulations implement amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code (Code) and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007 and section 506 of the

Tax Extenders and Alternative Minimum Tax Relief Act of 2008. See T.D. 9436, page 268.

Part III. Administrative, Procedural, and Miscellaneous

Guidance Under the Preparer Penalty Modification in the Tax Extenders and Alternative Minimum Tax Relief Act of 2008

Notice 2009-5

This notice provides guidance regarding implementation of the tax return preparer penalty under section 6694(a) of the Internal Revenue Code, as amended by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C. of Pub. L. No. 110-343, 122 Stat. 3765 (October 3, 2008) (the 2008 Act).

With this notice, the Treasury Department and the IRS are simultaneously issuing final regulations revising the regulatory scheme governing tax return preparer penalties in accordance with the amendments to sections 6694 and 6695 (and related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36)) in both the 2008 Act and the Small Business and Work Opportunity Tax Act of 2007, Title VIII-B of Pub. L. No. 110-28 (121 Stat. 190) (May 25, 2007) (the 2007 Act). Section 1.6694-2 of the final regulations, however, does not provide substantive guidance reflecting certain amendments to section 6694(a) made by the 2008 Act. Rather, the Treasury Department and the IRS are reserving § 1.6694-2(c) in those final regulations and are issuing this notice. This notice provides interim guidance on the 2008 Act's changes to section 6694(a) and solicits public comments on this guidance.

BACKGROUND

Section 6694(a) imposes a penalty on a tax return preparer who prepares a return or claim for refund reflecting an understatement of liability due to an "unreasonable position" if the tax return preparer knew (or reasonably should have known) of the position. No penalty is imposed, however, if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith. Immediately prior to the 2008 Act, under the standards of conduct implemented

by the 2007 Act's amendment to section 6694(a), a position would be treated as unreasonable unless (i) there was a reasonable belief that it would more likely than not be sustained on the merits, or (ii) the position was properly disclosed and had a reasonable basis. The Treasury Department and the IRS issued Notice 2007-54, 2007-27 I.R.B. 12, on June 11, 2007, which provided transitional relief under section 6694(a). On December 31, 2007, the Treasury Department and the IRS released both Notice 2008-11, 2008-3 I.R.B. 279, which clarified the earlier transition relief provided in Notice 2007-54, and Notice 2008-13, 2008-3 I.R.B. 282, which provided interim penalty compliance rules under the 2007 Act version of section 6694. On June 17, 2008, the Treasury Department and the IRS published in the **Federal Register** (REG-129243-07, 2008-27 I.R.B. 32 [73 F.R. 34560]) proposed amendments to the section 6694 regulations reflecting amendments made by the 2007 Act.

After the issuance of the proposed regulations, the 2008 Act revised section 6694(a) to provide that a position would be treated as unreasonable unless (i) there is or was substantial authority for the position or (ii) the position was properly disclosed and had a reasonable basis. The 2008 Act also enacted a special rule if the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies (including both reportable transactions with a significant purpose of Federal tax avoidance or evasion and listed transactions), under which a position is treated as unreasonable unless it is reasonable to believe that the position would more likely than not be sustained on the merits. The 2008 Act did not modify the section 6694(b) penalty for understatement due to willful or reckless conduct.

The 2008 Act's change in the general standard under section 6694(a) to substantial authority is retroactively effective for tax returns and claims for refund prepared after May 25, 2007. The special rule applicable to tax shelters and reportable transactions to which section 6662A applies is effective for tax returns and claims for refund prepared for taxable years ending af-

ter October 3, 2008, the 2008 Act's date of enactment.

This notice provides interim guidance to tax return preparers regarding the application of section 6694(a) as revised by the 2008 Act in order to provide immediate guidance for signing and nonsigning tax return preparers. Specifically, this interim guidance discusses the following issues: (1) the effect of the 2008 Act's changes to Notices 2007-54, 2008-11, and 2008-13, which provide guidance on the application of section 6694(a) under the 2007 Act; (2) the definition of substantial authority for purposes of section 6694(a)(2)(A); and (3) the interim penalty compliance rules for "tax shelter" transactions as defined in section 6662(d)(2)(C)(ii). Tax return preparers may rely on the interim guidance in this notice with respect to these issues until further guidance is issued. The final regulations under section 6694 govern all other issues with respect to this penalty.

The guidance regarding effective dates addresses the retroactive effect of the 2008 Act's revisions to section 6694 and also addresses the different effective dates for the 2008 Act's general standard (which applies retroactively) and the special rule for tax shelters and reportable transactions to which section 6662A applies (which does not apply retroactively). The guidance also clarifies the interaction between the 2008 Act's effective dates and the effective dates for Notices 2007-54, 2008-11, and 2008-13.

The interim guidance regarding substantial authority generally adopts the analysis provided under existing substantial authority regulations under section 6662. The interim guidance clarifies certain aspects of the application of the substantial authority regulations in § 1.6662-4(d) in the context of section 6694.

This interim guidance addresses the application of section 6694 while the Treasury Department and IRS consider further guidance for tax return preparers and taxpayers on the definition of tax shelter for purposes of sections 6694 and 6662(d)(2)(C). A broad interpretation of tax shelter for purposes of section 6694 could be inconsistent with the 2008 Act's changes to section 6694 by requiring tax

return preparers to comply with the general standard previously imposed under the 2007 Act (a reasonable belief that the position would more likely than not be sustained on the merits) rather than the new general standard under the 2008 Act (substantial authority).

INTERIM GUIDANCE UNDER SECTION 6694(a)

A. Effect of the 2008 Act on Applicability of Notices 2007-54, 2008-11, and 2008-13

Notices 2007-54 and 2008-11 provided transitional relief for (1) all tax returns, amended tax returns, and claims for refund (other than employment and excise tax returns) filed on or after May 25, 2007, and on or before December 31, 2007; (2) all employment and excise tax returns filed on or after May 25, 2007, and on or before January 31, 2008; and (3) advice provided on or after May 25, 2007, and on or before December 31, 2007. Tax return preparers may continue to rely upon the transitional relief rules provided in Notices 2007-54 and 2008-11 for returns or claims for refund for the periods covered by those notices.

Notice 2008-13 provided interim guidance on, among other issues, the standards of conduct applicable to tax return preparers under section 6694(a) and interim penalty compliance obligations applicable to tax return preparers. Notice 2008-13 is effective for (1) all tax returns, amended tax returns, and claims for refund (other than 2007 employment and excise tax returns) filed on or after January 1, 2008, and before January 1, 2009 (the effective date of the final regulations under section 6694(a)); (2) all 2007 employment and excise tax returns filed on or after February 1, 2008, and before January 1, 2009; and (3) advice provided on or after January 1, 2008 and before January 1, 2009.

Consistent with the 2007 Act, the interim guidance provided by Notice 2008-13 generally held tax return preparers to a more stringent standard under section 6694(a) than the substantial authority standard imposed by the 2008 Act's revisions to section 6694. Accordingly, for positions other than with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transac-

tions to which section 6662A applies, tax return preparers may apply the substantial authority standard consistent with the 2008 Act or may rely upon the interim guidance provided in Notice 2008-13 when preparing returns or claims for refund for the periods covered by that notice.

The 2008 Act's special rule for tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies does not apply retroactively, and therefore the provisions of Notice 2008-13 will apply to tax shelter and section 6662A reportable transaction positions on returns or claims for refund for tax years ending prior to the date of enactment of the 2008 Act and otherwise covered by Notice 2008-13, as set forth above. The interim guidance provided in this notice with respect to tax shelters (as defined in section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies is effective for returns or claims for refund for tax years ending after the date of enactment of the 2008 Act.

B. Definition of Substantial Authority

Until further guidance is issued, solely for purposes of section 6694(a), "substantial authority" has the same meaning as in § 1.6662-4(d)(2) (or any successor provision) of the accuracy-related penalty regulations. The analysis prescribed by § 1.6662-4(d)(3)(i) through (ii) (or any successor provisions) applies for purposes of determining whether substantial authority is present. The authorities considered in determining whether there is substantial authority for a position are those authorities described in § 1.6662-4(d)(3)(iii) (or any successor provision).

There is substantial authority for a position for purposes of section 6694 if the taxpayer is the subject of a "written determination" as provided in § 1.6662-4(d)(3)(iv)(A). In the case of a tax return preparer, however, a written determination with a misstatement or omission of material fact is substantial authority unless the tax return preparer knew or should have known of the misstatement or omission of material fact when the return or claim for refund was filed. The applicability of court cases to the taxpayer's situation by reason of the taxpayer's residence in a particular

jurisdiction is not taken into account in determining whether there is substantial authority for a position in accordance with § 1.6662-4(d)(3)(iv)(B). Notwithstanding the preceding sentence, there is substantial authority for a position if the position is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the position. Finally, there is substantial authority for a position only if there is substantial authority on the date the return or claim for refund is deemed prepared, as prescribed by § 1.6694-1(a)(2), or there was substantial authority on the last day of the taxable year to which the return relates.

Conclusions reached in treatises, legal periodicals, legal opinions, or opinions rendered by tax professionals (including tax return preparers) are not authority. The authorities underlying such expressions of opinion, if applicable to the facts of a particular case, however, may give rise to substantial authority for the position. Solely for purposes of section 6694(a), a tax return preparer nevertheless will be considered to have met the standard in section 6694(a)(2)(A) if the tax return preparer relies in good faith and without verification on the advice of another advisor, another tax return preparer, or other party. Factors used in evaluating a tax return preparer's good faith reliance on the advice of another are found in § 1.6694-2(e)(5).

C. Interim Penalty Compliance Rules for Tax Shelter Transactions

Until further guidance is issued, solely for purposes of section 6694(a), a position with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) will not be deemed an "unreasonable position" described in section 6694(a)(2)(A) through (C) if there is substantial authority for the position and the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer in the event that the transaction is deemed to have a significant purpose of Federal tax avoidance or evasion. This advice to the taxpayer must explain that, if the position has a significant purpose of tax avoidance or evasion, then there needs to be at a minimum substantial authority for the position, the taxpayer must possess a reasonable be-

lief that the tax treatment was more likely than not the proper treatment in order to avoid a penalty under section 6662(d) as applicable, and disclosure in accordance with § 1.6662-4(f) will not protect the taxpayer from assessment of an accuracy-related penalty if section 6662(d)(2)(C) applies to the position. The tax return preparer must contemporaneously document the advice in the tax return preparer's files.

If a nonsigning tax return preparer provides advice to another tax return preparer regarding a position with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)), the position will not be deemed an "unreasonable position" described in section 6694(a)(2)(A) through (C) if there is substantial authority for the position and the nonsigning tax return preparer provides a statement to the other tax return preparer about the penalty standards applicable to the tax return preparer under section 6694. Contemporaneously prepared documentation in the nonsigning tax return preparer's files is sufficient to establish that the statement was given to the other tax return preparer. If a nonsigning tax return preparer and other tax return preparer are employed by the same firm, then contemporaneous documentation of advice provided by any tax return preparer in that firm to the taxpayer regarding applicable penalty standards, as described in the immediately preceding paragraph, is also sufficient to establish that the statement was given by a nonsigning tax return preparer to the other tax return preparers within the firm.

The above interim penalty compliance rules do not apply to a position described in section 6662A (a reportable transaction with a significant purpose of Federal tax avoidance or evasion or a listed transaction).

REQUESTS FOR COMMENTS

Interested parties are invited to submit comments on this notice by Monday, March 16, 2009. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2009-5), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand-delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (No-

tice 2009-5), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: *Notice.Comments@irs.counsel.treas.gov*. Please include *Notice 2009-5* in the subject line of any electronic submissions.

Effect on Other Documents

This notice modifies and clarifies Notice 2008-13, 2008-3 I.R.B. 282.

EFFECTIVE DATE

For positions other than tax shelters and reportable transaction positions, this notice is effective for all advice rendered or returns, amended returns, and claims for refund prepared after May 25, 2007. The interim guidance in this notice for tax shelters (within the meaning of section 6662(d)(2)(C)(ii)) and reportable transactions to which section 6662A applies is effective for tax shelter and reportable transaction positions on tax returns for taxable years ending after the 2008 Act's date of enactment, October 3, 2008.

CONTACT INFORMATION

The principal authors of this notice are Matthew S. Cooper and Michael E. Hara of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Mr. Cooper at (202) 622-4940 or Mr. Hara at (202) 622-4910 (not toll-free calls).

Calculation of Volume of Alcohol for Fuel Credits; Denaturants

Notice 2009-6

SECTION 1. PURPOSE

This notice provides a temporary safe harbor and a transitional rule to implement recent statutory changes relating to the volume of denaturants that will be treated as alcohol for purposes of certain credits and payments related to the fuel use of alcohol and alcohol fuel mixtures (§§ 34, 40(a), 6426(a), and 6427(e) of the Internal Revenue Code). These changes were made by

section 15332 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-234) (the Food Act). This notice affects alcohol producers, persons that use alcohol as a fuel in a trade or business, persons that sell alcohol at retail for delivery into vehicles, and producers of alcohol fuel mixtures that sell or use the mixture as a fuel in their trade or business.

SECTION 2. BACKGROUND

(a) *Overview.* Sections 34, 40(a), 6426(a), and 6427(e) provide tax incentives for alcohol and alcohol fuel mixtures that are sold for use or used as a fuel in certain specified transactions. For these purposes, § 2(b) of Notice 2005-4, 2005-1 C.B. 289, provides that *alcohol* has the meaning given to the term in § 48.4081-6(b)(1) of the Manufacturers and Retailers Excise Tax Regulations except that, for purposes of the credit allowed by § 40, alcohol also includes alcohol with a proof of at least 150.

(b) *Calculation of the volume of alcohol—(1) Before January 1, 2009.* Before January 1, 2009, § 40(d)(4) provides that for purposes of determining the number of gallons of alcohol with respect to which a credit is allowable, the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants). A similar rule applies to alcohol fuel mixtures. See § 48.4081-6(b)(1) and Notice 2005-4.

(2) *After December 31, 2008.* Effective for fuel sold or used after December 31, 2008, the Food Act amended § 40(d)(4) to provide that denaturants included in the volume of alcohol may not exceed 2 percent of the volume of such alcohol (including denaturants). The Food Act also added section 6426(b)(5) to apply the same 2-percent limit to claims related to alcohol fuel mixtures under § 34, 6426, or 6427.

(c) *Proof.* Except as provided in section 2(a) of this notice, alcohol with a proof of less than 190 does not qualify for a credit or payment. The determination of proof is made without regard to added denaturants. See § 40(d)(1)(B) and 6426(b)(4)(A)(ii). Under the 5-percent limit, the amount of pure alcohol contained in each gallon qualifying as 190-proof alcohol may be as little

as 90.25 percent of its total volume. Under the 2-percent limit, the amount of pure alcohol contained in each gallon qualifying as 190-proof alcohol is increased to 93.1 percent of its total volume.

(d) *TTB Requirements.* Regulations promulgated by the Alcohol and Tobacco Tax and Trade Bureau of the Department of Treasury (TTB) in 27 CFR § 19.1005 provide that alcohol eligible for withdrawal as fuel alcohol must contain 2 gallons of denaturant for each 100 gallons of distilled spirits. To satisfy the TTB rule, denaturants included in the volume of fuel alcohol must exceed 1.96 percent of the volume of the fuel alcohol.

(e) *Public comments*—(1) Commentators have expressed concern about the ability to meet TTB's 1.96-percent minimum requirement while not exceeding the Food Act's maximum 2-percent denaturant allowance. The commentators indicate that existing denaturing equipment does not allow for denaturing within this 0.04-percent range on a consistent basis. They also indicate that there is no test procedure to accurately measure the amount of denaturant in alcohol after it has been denatured. As a result, ethanol producers and blenders will have no reliable means of determining when denaturants exceed the 2-percent limit. Concerns have also been expressed about alcohol containing 5 percent denaturant that is in transit or stored by alcohol fuel blenders on January 1, 2009.

(2) Because of concerns regarding the accurate measurement of denaturants in alcohol, this notice adopts a temporary safe harbor to allow time to study the problem and determine if there are effective means to test the volume of denaturant in alcohol. Under this safe harbor, the Service will not challenge a claim with respect to denaturants included in alcohol unless the denaturants clearly exceed the Food Act limit. For this purpose, the Service will treat denaturants as not clearly exceeding the Food Act limit unless there is clear evidence establishing that denaturants exceed 2.5 percent of volume (including denaturants). The safe harbor is available only if no more than 2 percent of the alcohol's volume is disregarded under the rule providing that proof is determined without regard to added denaturants. This will ensure that the amount of pure alcohol provided for fuel use is increased in the amount required by the reduced denaturant

limit. This notice also adopts a transition rule for January 2009 to provide relief for alcohol already produced and shipped.

SECTION 3. TEMPORARY SAFE HARBOR AND TRANSITIONAL RULE

(a) *Safe harbor.* If a credit or payment is allowable with respect to alcohol on account of an event (such as a mixture producer's sale of an alcohol fuel mixture for use as a fuel) occurring after December 31, 2008, and before the date specified in further guidance on this issue, the following rules apply:

(1) The Service will not challenge a claim to a credit or payment with respect to the approved denaturants included in the volume of such alcohol if—

(i) In determining the proof of the alcohol, not more than 2 percent of its volume is disregarded as an added denaturant; and

(ii) There is no clear evidence establishing that added denaturants are more than 2.5 percent of the volume of such alcohol (including added denaturants).

(2) Approved denaturants are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the alcohol and do not exceed the amount of denaturants that may be added to such alcohol under a formula approved by the Secretary.

(b) *Nonproducer rule for January 2009.* The volume of alcohol for which a credit or payment is allowable may be determined under the rules in effect before January 1, 2009, if—

(1) The credit or payment is allowable to a person other than the producer of the alcohol; and

(2) The credit or payment is allowable on account of an event (such as a mixture producer's sale of an alcohol fuel mixture for use as a fuel) occurring before February 1, 2009.

SECTION 4. EFFECTIVE DATE

This notice is effective on and after January 1, 2009.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Taylor Cortright of the Office of Associate

Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Taylor Cortright at (202) 622-3130 (not a toll-free call).

Transaction of Interest — Subpart F Income Partnership Blocker

Notice 2009-7

The Internal Revenue Service (IRS) and the Treasury Department are aware of a type of transaction, described more fully below, in which a U.S. taxpayer that owns controlled foreign corporations (CFCs) that hold stock of a lower-tier CFC through a domestic partnership takes the position that subpart F income of the lower-tier CFC or an amount determined under section 956(a) of the Internal Revenue Code (Code) related to holdings of United States property by the lower-tier CFC does not result in income inclusions under section 951(a) for the U.S. taxpayer. The IRS and Treasury Department believe this transaction (which includes taking the position that the U.S. taxpayer has no income inclusion under section 951(a)) has the potential for tax avoidance or evasion, but lack enough information to determine whether the transaction should be identified specifically as a tax avoidance transaction. This notice identifies this transaction and substantially similar transactions as transactions of interest for purposes of § 1.6011-4(b)(6) of the Income Tax Regulations and sections 6111 and 6112 of the Code. This notice also alerts persons involved in these transactions to certain responsibilities that may arise from their involvement with these transactions.

FACTS

In a typical transaction, a U.S. taxpayer (Taxpayer) wholly owns two CFCs, (CFC1 and CFC2). CFC1 and CFC2 are partners in a domestic partnership (USPartnership). USPartnership owns 100 percent of the stock of another CFC (CFC3). Some or all of the income of CFC3 is subpart F income (as defined in section 952). As part of the transaction, Taxpayer takes the position that the subpart F income

of CFC3 is currently included in the income of USPartnership (which is not subject to U.S. tax) and is not included in the income of Taxpayer. The result of the claimed tax treatment is that income that would otherwise be taxable currently to Taxpayer under subpart F of the Code is not taxable to Taxpayer because of the interposition of a domestic partnership in the CFC structure. Without the interposition of USPartnership, the section 951(a) inclusion resulting from the subpart F income of CFC3 would be taxable currently to Taxpayer. In some variations of the transaction, there may be more than one person that owns the stock of CFC1 and/or CFC2, USPartnership may own less than all of the stock of CFC3, a domestic trust may be used instead of a domestic partnership, or the section 951(a) inclusion amount may result from an amount determined under section 956.

The IRS and Treasury Department are concerned that taxpayers are taking the position that structures described in this notice result in no income inclusion to Taxpayer under section 951. Therefore the IRS and Treasury Department are identifying as transactions of interest such structures with respect to which the Taxpayer takes the position that there is no income inclusion to Taxpayer under section 951, as well as substantially similar transactions. The IRS and Treasury Department believe that the position there is no income inclusion to Taxpayer under section 951 is contrary to the purpose and intent of the provisions of subpart F of the Code.

TRANSACTION OF INTEREST

Effective Date

Transactions that are the same as, or substantially similar to, the transactions described in this notice are identified as transactions of interest for purposes of § 1.6011-4(b)(6) and sections 6111 and 6112 effective December 29, 2008, the date this notice was released to the public. Persons entering into these transactions on or after November 2, 2006, must disclose the transaction as described in 1.6011-4. Material advisors who make a tax statement on or after November 2, 2006, with respect to transactions entered into on or after November 2, 2006, have disclosure and list maintenance obligations under

sections 6111 and 6112. See § 1.6011-4(h) and §§ 301.6111-3(i) and 301.6112-1(g) of the Procedure and Administration Regulations.

Independent of their classification as transactions of interest, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the requirements of sections 6011, 6111, or 6112, or the regulations thereunder. When the IRS and Treasury Department have gathered enough information to make an informed decision as to whether these transactions are a tax avoidance type of transaction, the IRS and Treasury Department may take one or more administrative actions, including removing the transactions from the transactions of interest category in published guidance, designating the transactions as a listed transaction, or providing a new category of reportable transactions. In the interim, in appropriate situations, the IRS may challenge the taxpayer's position taken as part of these transactions under subpart F, subchapter K, or other provisions of the Code or under judicial doctrines such as sham transaction, substance over form, and economic substance.

Participation

Under § 1.6011-4(c)(3)(i)(E), Taxpayer and USPartnership are participants in this transaction for each year in which their respective returns reflect tax consequences or a tax strategy described in this notice.

Time for Disclosure

See § 1.6011-4(e) and § 301.6111-3(e).

Material Advisor Threshold Amount

The threshold amounts are the same as those for listed transactions. See § 301.6111-3(b)(3)(i)(B).

Penalties

Persons required to disclose these transactions under § 1.6011-4 who fail to do so may be subject to the penalty under section 6707A. Persons required to disclose these transactions under section 6111 who fail to do so may be subject to the penalty under section 6707(a). Persons required to maintain lists of advisees under section 6112 who fail to do so (or who fail to provide

such lists when requested by the Service) may be subject to the penalty under section 6708(a). In addition, the Service may impose other penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under section 6662 or section 6662A.

DRAFTING INFORMATION

The principal author of this notice is John H. Seibert of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Seibert at (202) 622-3860 (not a toll-free call).

*26 CFR 601.602: Tax forms and instructions.
(Also: Part 1, §§ 6061, 6694, 6695, 7701.)*

Rev. Proc. 2009-11

SECTION 1. PURPOSE

This revenue procedure identifies the relevant categories of tax returns and claims for refund for purposes of the tax return preparer penalty under section 6694 of the Internal Revenue Code (Code), and identifies the returns and claims for refund required to be signed by a tax return preparer under regulations published by the Treasury Department and the IRS in order to avoid a penalty under Code section 6695(b). For other penalties that may be imposed on tax return preparers, see, for example, the regulations issued under section 6695.

SECTION 2. BACKGROUND

The Small Business and Work Opportunity Tax Act of 2007, Pub. L. No. 110-28, 121 Stat. 190 (the 2007 Act), was enacted on May 25, 2007. Section 8246 of the Act amended several sections of the Code by extending the application of the income tax return preparer penalties to all tax return preparers. The 2007 Act heightened the standards that must be met by preparers to avoid a penalty under section 6694(a) for understatements due to unreasonable basis (if the position is disclosed), and from realistic possibility of success on the

merits to reasonable belief that the position would more likely than not be sustained on the merits (if the position is not disclosed). The 2007 Act also increased the section 6694(a) penalty for understatement due to unreasonable positions from \$250 to the greater of \$1,000 or 50 percent of the income derived by the preparer, and increased the section 6694(b) penalty for willful or reckless conduct from \$1,000 to the greater of \$5,000 or 50% of the income derived by the preparer.

By extending the application of the income tax return preparer penalties to all tax return preparers, the 2007 Act amended section 6695(b) to impose a penalty on all tax return preparers of any return or claim for refund who fails to sign a return or claim for refund when required by regulations prescribed by the Secretary, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. The penalty under section 6695(b) is \$50 for each failure to sign, with a maximum of \$25,000 per person imposed with respect to each calendar year. The amendments to section 6695(b) are effective for tax returns and claims for refund prepared after May 25, 2007.

The Department of Treasury and the IRS released Notice 2008-13, 2008-3 I.R.B. 282, on December 31, 2007 to provide interim guidance under section 6694. Additional guidance was provided in Notice 2008-12, 2008-3 I.R.B. 280, also released on December 31, 2007, with respect

to the implementation of the tax return preparer signature requirement of section 6695(b). Notice 2008-46, 2008-18 I.R.B. 868, was released on April 16, 2008 and added certain returns and documents to Exhibits 1, 2, and 3 of Notice 2008-13. On June 17, 2008, the Treasury Department and the IRS published REG-129243-07, 2008-27 I.R.B. 32, in the **Federal Register**, 73 F.R. 34560, which provides proposed amendments to the regulations reflecting amendments made by the 2007 Act.

Section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Pub. L. No. 110-343, 122 Stat. 3765 (October 3, 2008) (the 2008 Act), amended the standards that must be met by preparers to avoid a penalty under section 6694(a) for understatement due to unreasonable positions from reasonable belief that the position would more likely than not be sustained on the merits to substantial authority for the position (for undisclosed positions). The 2008 Act did not change the standard in the 2007 Act applicable to disclosed positions. The 2008 Act also provided a special rule for tax shelters (as defined in § 6662(d)(1)(C)(ii)) and reportable transactions to which § 6662A applies, under which a position is treated as unreasonable unless it is reasonable to believe that the positions would more likely than not be sustained on the merits.

With this revenue procedure, the Treasury Department and the IRS are simultaneously issuing final regulations that revise the definitions of “return” and “claim for refund” in § 301.7701-15(b)(4) to only include tax return preparers of returns and claims for refund that are specifically identified in published guidance in the Internal Revenue Bulletin.

SECTION 3. RETURNS AND CLAIMS FOR REFUND SUBJECT TO THE SECTION 6694 PENALTY

.01 This Section identifies categories of returns to which the penalty under section 6694 could apply. The Treasury Department and the IRS may choose to add or remove documents from any of the categories in this revenue procedure in future guidance as they gain experience in implementing the provisions of the 2008 Act and the final regulations.

.02 *Tax Returns Reporting Tax Liability*

Solely for purposes of section 6694, a *return* or *claim for refund* includes the tax returns listed in this subsection enumerated below, or a claim for refund with respect to any such return. A claim for refund of tax includes a claim for credit against any tax and a request for abatement. A person who for compensation prepares all or a substantial portion of a tax return listed in this subsection, or a claim for refund with respect to any such tax return, is a tax return preparer who is subject to section 6694.

(1) Income Tax Returns — Subtitle A

Form 990T, *Exempt Organization Business Income Tax Return*;

Form 1040, *U.S. Individual Income Tax Return*;

Form 1040A, *U.S. Individual Income Tax Return*;

Form 1040-C, *U.S. Departing Alien Income Tax Return*;

Form 1040-EZ, *Income Tax Return for Single and Joint Filers With No Dependents*;

Form 1040EZ-T, *Request for Refund of Federal Telephone Excise Tax*;

Form 1040NR, *U.S. Nonresident Alien Income Tax Return*;

Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*;

Form 1040-PR, *Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona fide de Puerto Rico)*;

Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*;

Form 1040X, *Amended U.S. Individual Income Tax Return*;

Form 1041, *U.S. Income Tax Return for Estates and Trusts*;
Form 1041–N, *U.S. Income Tax Return for Electing Alaska Native Settlement Trusts*;
Form 1041–QFT, *U.S. Income Tax Return for Qualified Funeral Trusts*;
Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*;
Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*;
Form 1120, *U.S. Corporation Income Tax Return*;
Form 1120–C, *U.S. Income Tax Return for Cooperative Associations*;
Form 1120–F, *U.S. Income Tax Return of a Foreign Corporation*;
Form 1120–FSC, *U.S. Income Tax Return of a Foreign Sales Corporation*;
Form 1120–H, *U.S. Income Tax Return for Homeowners Associations*;
Form 1120–IC DISC, *Interest Charge Domestic International Sales Corporation Return*;
Form 1120–L, *U.S. Life Insurance Company Income Tax Return*;
Form 1120–ND, *Return for Nuclear Decommissioning Funds and Certain Related Persons*;
Form 1120–PC, *U.S. Property and Casualty Insurance Company Income Tax Return*;
Form 1120–POL, *U.S. Income Tax Return for Certain Political Organizations*;
Form 1120–REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*;
Form 1120–RIC, *U.S. Income Tax Return for Regulated Investment Companies*;
Form 1120S, *U.S. Income Tax Return for an S Corporation*;
Form 1120–SF, *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*;
Form 1120X, *Amended U.S. Corporation Income Tax Return*;
Form 2438, *Undistributed Capital Gains Tax Return*;
Forms 8038–T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate*;
Form 8038–R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*;
Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*; and
Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*.

(2) Estate and Gift Tax Returns — Subtitle B

Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*;
Form 706–A, *United States Additional Estate Tax Return*;
Form 706–D, *United States Additional Estate Tax Return Under Code Section 2057*;
Form 706–GS(D), *Generation-Skipping Transfer Tax Return for Distributions*;
Form 706–GS(T), *Generation-Skipping Transfer Tax Return for Terminations*;
Form 706–NA, *United States Estate (and Generation-Skipping Transfer) Tax Return — Estate of nonresident not a citizen of the United States*;
Form 706–QDT, *United States Estate Tax Return for Qualified Domestic Trusts*;
Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*; and
Form 843, *Claim for Refund and Request for Abatement*.

(3) Employment Tax Returns — Subtitle C

Form CT–1, *Employer’s Annual Railroad Retirement Tax Return*;
Form CT–1X, *Adjusted Employer’s Annual Railroad Retirement Tax Return or Claim for Refund*;
Form CT–2, *Employee Representative’s Quarterly Railroad Tax Return*;
Form 843, *Claim for Refund and Request for Abatement*;

Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*;
 Form 940-PR, *Planilla para la Declaración Federal ANUAL del Patrono de la Contribución Federal para el Desempleo (FUTA)*;
 Form 941, *Employer's QUARTERLY Federal Tax Return*;
 Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*;
 Form 941-PR, *Planilla para la Declaración Federal TRIMESTRAL del Patrono*;
 Form 941-X (PR), *Ajuste a la Declaración Federal TRIMESTRAL del Patrono o Reclamacion de Reembolso*;
 Form 941-SS, *Employer's QUARTERLY Federal Tax Return*;
 Form 941-M, *Employer's MONTHLY Federal Tax Return*;
 Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*;
 Form 943-X, *Adjusted Employer's Annual Federal Tax Return for Agricultural Employees or Claim for Refund*;
 Form 943-PR, *Planilla para la Declaración ANUAL de la Contribución Federal del Patrono de Empleados Agrícolas*;
 Form 943-X (PR), *Ajuste a la Declaración Federal ANUAL del Patrono de Empleados Agrícolas o Reclamacion de Reembolso*;
 Form 944, *Employer's ANNUAL Federal Tax Return*;
 Form 944-X, *Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund*;
 Form 944-PR, *Planilla para la Declaración ANUAL de la Contribución Federal del Patrono*;
 Form 944-X (PR), *Ajuste a la Declaración Federal ANUAL del Patrono o Reclamacion de Reembolso (Puerto Rico)*;
 Form 944(SP), *Declaración Federal ANUAL de Impuestos del Patrono o Empleador*;
 Form 944-X (SP), *Ajuste a la Declaración Federal ANUAL del Patrono o Reclamacion de Reembolso*;
 Form 944-SS, *Employer's ANNUAL Federal Tax Return*;
 Form 945, *Annual Return of Withheld Federal Income Tax*
 Form 945-X, *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund*;
 Schedule H (Form 1040), *Household Employment Taxes*; and
 Anexo H-PR (Formulario 1040-PR) *Contribuciones sobre el Empleo de Empleados Domésticos*.

(4) Miscellaneous Excise Tax Returns — Subtitle D

Form 11-C, *Occupational Tax and Registration Return for Wagering*;
 Form 720, *Quarterly Federal Excise Tax Return*;
 Form 720X, *Amended Quarterly Federal Excise Tax Return*;
 Form 730, *Monthly Tax Return for Wagers*;
 Form 843, *Claim for Refund and Request for Abatement*;
 Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation (with respect to the excise tax based on investment income)*;
 Form 2290, *Heavy Highway Vehicle Use Tax Return*;
 Form 2290(FR), *Declaration d'Impot sur L'utilisation des Vehicules Lourds sur les Routes*;
 Form 2290(SP), *Declaración del Impuesto sobre el Uso de Vehículos Pesados en las Carreteras*;
 Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*;
 Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*;
 Form 8612, *Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts*;
 Form 8613, *Return of Excise Tax on Undistributed Income of Regulated Investment Companies*;
 Form 8831, *Excise Taxes on Excess Inclusions of REMIC Residual Interests*; and
 Form 8849, *Claim for Refund of Excise Taxes*.

Form 8924, *Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests*

(5) Alcohol, Tobacco, and Certain Other Excise Taxes — Subtitle E

Form 8725, *Excise Tax on Greenmail*; and

Form 8876, *Excise Tax on Structured Settlement Factoring Transactions*.

(6) Procedure and Administration — Subtitle F

Form 8752, *Required Payment or Refund Under Section 7519*.

.03 *Information Returns and Other Documents*

(1) A person who for compensation prepares information returns or other documents that include information that is or may be reported on a taxpayer's tax return or claim for refund is subject to section 6694 if the information reported on the information return or other document constitutes a *substantial portion* of the taxpayer's tax return or claim for refund, notwithstanding the fact that the information return or other document may not be reporting the liability of the taxpayer. Treas. Reg. § 301.7701-15(b)(3)(iii). The current regulatory definitions of *substantial portion* and *substantial preparation* require a facts and circumstances analysis

of each document prepared and a comparison of the items included on that document with the tax return or claim for refund that actually reports a tax liability. Treas. Reg. § 301.7701-15(b)(3)(i). Thus, for example, the preparer of a Form 1065, *U.S. Return of Partnership Income*, may be deemed to be the preparer of any partner's individual income tax return (e.g., Form 1040, *U.S. Individual Income Tax Return*), if the items on the partnership return constitute a substantial portion of that partner's income tax return. Treas. Reg. § 301.7701-15(b)(3)(iii).

(2) *Information Returns Constituting a Substantial Portion of a Taxpayer's Tax Return*

Solely for purposes of section 6694, an information return listed in this subsection below that includes information that is or may be reported on a taxpayer's tax return or claim for refund is a return to which section 6694 could apply if the information reported constitutes a *substantial portion* of that taxpayer's tax return or claim for refund. A person who for compensation prepares any of the forms listed in this subsection, which form does not report a tax liability but affects an entry or entries on a tax return and constitutes a substantial portion of the tax return or claim for refund that does report a tax liability, is a tax return preparer who is subject to section 6694.

Form 706-GS (D-1), *Notification of Distribution From a Generation-Skipping Trust*;

Form 926, *Return by a U.S. Transferor of Property to a Foreign Corporation*;

Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*;

Form 1065, *U.S. Return of Partnership Income*;

Form 1065-B, *U.S. Return of Income for Electing Large Partnerships*;

Form 1120S, *U.S. Income Tax Return for an S Corporation*;

Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*;

Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner (Under section 6048(b))*;

Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*;

Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code)*;

Form 5500, *Annual Return/Report of Employee Benefit Plan*;

Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*;

Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*;

Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*;

Form 8858, *Information Return of U.S. Persons With Respect To Foreign Disregarded Entities*; and

Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*.

(3) *Other Documents Constituting a Substantial Portion of a Taxpayer's Tax Return*

Solely for purposes of section 6694, a document that includes information that is or may be reported on a taxpayer's tax return or claim for refund is treated as a re-

turn to which section 6694 could apply if the information reported constitutes a *substantial portion* of that taxpayer's tax return or claim for refund. For example,

a person who for compensation prepares documents, such as depreciation schedules or cost, expense or income allocation studies, that do not report a tax liability but which will affect an entry or entries on a tax return that does report a tax liability, and that constitute a substantial portion of such tax return, is a tax return preparer who is subject to section 6694.

.04 *Other Documents Not Constituting a Substantial Portion of a Taxpayer's Tax Return or Claim for Refund Unless Prepared Willfully to Understate Tax or in Reckless or Intentional Disregard of the Rules or Regulations*

Solely for purposes of section 6694, a document listed in this subsection that includes information that is or may be reported on a taxpayer's tax return or claim

for refund (and that constitutes a substantial portion of such tax return or claim for refund) will not subject the preparer to a penalty under section 6694(a). A document listed in this subsection, however, may subject the preparer to a willful or reckless conduct penalty under section 6694(b) if the information reported on the document constitutes a substantial portion of the tax return or claim for refund and is prepared willfully in any manner to understate the liability of tax on a tax return or claim for refund, or in reckless or intentional disregard of rules or regulations. For example, preparation of a Form W-2, *Wage and Tax Statement*, reporting compensation may constitute preparation of a substantial portion of the Form 1040 return on which the compensation is reported if

it is prepared willfully in a manner to understate the liability of tax. A person who for compensation prepares all or a substantial portion of any of the forms or other documents listed below is not a tax return preparer subject to section 6694(a) and (b) unless the form or document was prepared willfully in any manner to understate the liability of tax on a tax return or claim for refund or in reckless or intentional disregard of rules or regulations.

Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*;

Form W-2 series of returns;

Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*;

Form 990, *Return of Organization Exempt from Income Tax*;

Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*;

Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ*;

Form 1099 series of returns;

Form 4029 (*Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits*);

Form 4361 (*Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*);

Form 5227, *Split Interest Trust Information Return*;

Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*;

Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*;

Form 8038-G, *Information Return for Government Purpose Tax-Exempt Bond Issues*;

Form 8038-GC, *Consolidated Information Return for Small Tax-Exempt Government Bond Issues*;

Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*; and

Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*.

SECTION 4. RETURNS AND CLAIMS FOR REFUND SUBJECT TO THE SECTION 6695(b) PENALTY

.01 This section identifies the returns and claims for refund required to be signed by a signing tax return preparer as defined in § 301.7701-15(b)(1) in order to avoid a section 6695(b) penalty. The Treasury Department and the IRS may choose to add or remove documents that must be signed by a tax return preparer in future guid-

ance and in forms and instructions as additional forms are developed and as they gain experience in implementing the provisions of section 6695(b) and the final regulations. The tax return preparer must sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance. Information on the preparer signature requirement for electronically filed returns will be announced in IRS publications, instructions,

and information posted electronically on the *IRS.gov* website.

.02 *Forms Requiring Signature of Tax Return Preparer*

Consistent with existing regulations, in order to avoid the imposition of a penalty under section 6695(b), a signing tax return preparer must provide a signature on any tax returns or claims for refund of tax that are filed on or after January 1, 2009, including but not limited to the following:

(1) Income Tax Returns — Subtitle A

Form 990-T, *Exempt Organization Business Income Tax Return*;
Form 1040, *U.S. Individual Income Tax Return*;
Form 1040A, *U.S. Individual Income Tax Return*;
Form 1040-C, *U.S. Departing Alien Income Tax Return*;
Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*;
Form 1040NR, *U.S. Nonresident Alien Income Tax Return*;
Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*;
Form 1040-PR, *Planilla para la Declaración de la Contribución Federal sobre el Trabajo por Cuenta Propia (Incluyendo el Crédito Tributario Adicional por Hijos para Residentes Bona fide de Puerto Rico)*;
Form 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*;
Form 1040X, *Amended U.S. Individual Income Tax Return*;
Form 1041, *U.S. Income Tax Return for Estates and Trusts*;
Form 1041-N, *U.S. Income Tax Return for Electing Alaska Native Settlement Trusts*;
Form 1041-QFT, *U.S. Income Tax Return for Qualified Funeral Trusts*;
Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*;
Form 1066, *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*;
Form 1120, *U.S. Corporation Income Tax Return*;
Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*;
Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*;
Form 1120-FSC, *U.S. Income Tax Return of a Foreign Sales Corporation*;
Form 1120-H, *U.S. Income Tax Return for Homeowners Associations*;
Form 1120IC-DISC, *Interest Charge Domestic International Sales Corporation Return*;
Form 1120-L, *U.S. Life Insurance Company Income Tax Return*;
Form 1120-ND, *Return for Nuclear Decommissioning Funds and Certain Related Persons*;
Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*;
Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*;
Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*;
Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*;
Form 1120S, *U.S. Income Tax Return for an S Corporation*;
Form 1120-SF, *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*;
Form 1120X, *Amended U.S. Corporation Income Tax Return*;
Form 2438, *Undistributed Capital Gains Tax Return*;
Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*; and
Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*.

(2) Estate and Gift Tax Returns — Subtitle B

Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*;
Form 706-A, *United States Additional Estate Tax Return*;
Form 706-D, *United States Additional Estate Tax Return Under Code Section 2057*;
Form 706-GS(D), *Generation-Skipping Transfer Tax Return For Distributions*;

Form 706–GS(T), *Generation-Skipping Transfer Tax Return For Terminations*;
Form 706–NA, *United States Estate (and Generation-Skipping Transfer) Tax Return — Estate of nonresident not a citizen of the United States*;
Form 706–QDT, *United States Estate Tax Return for Qualified Domestic Trusts*;
Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*; and
Form 843, *Claim for Refund and Request for Abatement*.

(3) Employment Tax Returns — Subtitle C

Form CT–1, *Employer’s Annual Railroad Retirement Tax Return*;
Form CT–1 X, *Adjusted Employer’s Annual Railroad Retirement Tax Return or Claim for Refund*;
Form CT–2, *Employee Representative’s Quarterly Railroad Tax Return*;
Form 843, *Claim for Refund and Request for Abatement*;
Form 940, *Employer’s Annual Federal Unemployment (FUTA) Tax Return*;
Form 940–PR, *Planilla para la Declaración Federal ANUAL del Patrono de la Contribución Federal para el Desempleo (FUTA)*;
Form 941, *Employer’s QUARTERLY Federal Tax Return*;
Form 941–X, *Adjusted Employer’s QUARTERLY Federal Tax Return or Claim for Refund*;
Form 941–PR, *Planilla para la Declaración Federal TRIMESTRAL del Patrono*;
Form 941–X (PR), *Ajuste a la Declaración Federal TRIMESTRAL del Patrono o Reclamacion de Reembolso*;
Form 941–SS, *Employer’s QUARTERLY Federal Tax Return*;
Form 941–M, *Employer’s MONTHLY Federal Tax Return*;
Form 943, *Employer’s Annual Federal Tax Return for Agricultural Employees*;
Form 943–X, *Adjusted Employer’s Annual Federal Tax Return for Agricultural Employees or Claim for Refund*;
Form 943(PR), *Planilla para la Declaración ANUAL de La Contribución Federal del Patrono de Empleados Agrícolas*;
Form 943–X (PR), *Ajuste a la Declaración Federal Anual del Patrono de Empleados Agrícolas o Reclamacion de Reembolso*
Form 944, *Employer’s ANNUAL Federal Tax Return*;
Form 944–X, *Adjusted Employer’s ANNUAL Federal Tax Return or Claim for Refund*;
Form 944–PR, *Planilla para la Declaración ANUAL de la Contribución Federal del Patrono*;
Form 944–X (PR), *Ajuste a la Declaración Federal ANUAL del Patrono o Reclamacion de Reembolso (Puerto Rico)*;
Form 944(SP), *Declaración Federal ANUAL de Impuestos del Patrono o Empleador*;
Form 944–X (SP), *Ajuste a la Declaración Federal ANUAL del Empleador o Reclamacion de Reembolso*;
Form 944–SS, *Employer’s ANNUAL Federal Tax Return*;
Form 945, *Annual Return of Withheld Federal Income Tax*;
Form 945–X, *Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund*;
Schedule H (Form 1040), *Household Employment Taxes*; and
Anexo H-PR (Formulario 1040–PR), *Contribuciones sobre el Empleo de Empleados Domésticos*.

(4) Miscellaneous Excise Tax Returns — Subtitle D

Form 11–C, *Occupational Tax and Registration Return for Wagering*;
Form 720, *Quarterly Federal Excise Tax Return*;
Form 720X, *Amended Quarterly Federal Excise Tax Return*;
Form 730, *Monthly Tax Return for Wagers*;
Form 843, *Claim for Refund and Request for Abatement*;

Form 990–PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*;

Form 2290, *Heavy Highway Vehicle Use Tax Return*;

Form 2290(FR), *Declaración d’Impot sur L’utilisation des Vehicules Lourds sur les Routes*;

Form 2290(SP), *Declaración del Impuesto sobre el Uso de Vehículos Pesados en las Carreteras*;

Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*;

Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*;

Form 8612, *Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts*;

Form 8613, *Return of Excise Tax on Undistributed Income of Regulated Investment Companies*;

Form 8831, *Excise Taxes on Excess Inclusions of REMIC Residual Interests*;

Form 8849, *Claim for Refund of Excise Taxes*; and

Form 8924, *Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests*.

(5) Alcohol, Tobacco, and Other Excise Taxes — Subtitle E

Form 8725, *Excise Tax on Greenmail*; and

Form 8876, *Excise Tax on Structured Settlement Factoring Transactions*.

(6) Information Returns and Other Documents

Form 1065, *U.S. Return of Partnership Income*;

Form 1065–B, *U.S. Return of Income for Electing Large Partnerships*;

Form 5227, *Split Interest Trust Information Return*;

Form 8453–B, *U.S. Electing Large Partnership Declaration for an IRS e-file Return*;

Form 8453–C, *U.S. Corporation Income Tax Declaration for an IRS e-file Return*;

Form 8453–EO, *Exempt Organization Declaration and Signature for Electronic Filing*;

Form 8453–EX, *Excise Tax Declaration for an IRS e-file Return*;

Form 8453–F, *U.S. Estate or Trust Income Tax Declaration and Signature for Electronic Filing*;

Form 8453–I, *Foreign Corporation Income Tax Declaration for an IRS e-file Return*;

Form 8453–PE, *U.S. Partnership Declaration for an IRS e-file Return*;

Form 8453–S, *U.S. S Corporation Income Tax Declaration for an IRS e-file Return*; and

Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*.

(6) Procedure and Administration — Subtitle F

Form 8752, *Required Payment or Refund Under Section 7519*.

SECTION 5. EFFECT ON OTHER DOCUMENTS

This revenue procedure obsoletes Notice 2008–12, 2008–3 I.R.B. 280; and Notice 2008–46, 2008–18 I.R.B. 868. This revenue procedure modifies and supercedes the list of forms in Notice 2008–13, 2008–3 I.R.B. 282.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective January 1, 2009, for all forms, tax returns,

amended tax returns, and claims for refund filed on or after that date.

SECTION 7. CONTACT INFORMATION

The principal authors of this revenue procedure are Matthew S. Cooper and Michael E. Hara of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Mr. Cooper at (202) 622–4940 or Mr. Hara at (202) 622–4910 (not toll-free calls).

26 CFR 1.61–21: Taxation of fringe benefits. (Also: §§ 61, 280F.)

Rev. Proc. 2009–12

This revenue procedure provides maximum vehicle values for 2009 that taxpayers need to determine the value of personal use of an employer–provided vehicle under the special valuation rules under regulations section 1.61–21(d) and (e). These values are indexed annually for inflation. For purposes of this revenue procedure, the indexation takes into account only certain components of the Consumer Price In-

dex (CPI). These components can decrease even when the overall CPI increases, as is the case for this year.

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2009 for which the vehicle cents-per-mile valuation rule provided under section 1.61-21(e) of the Income Tax Regulations may be applicable is \$15,000 for a passenger automobile and \$15,200 for a truck or van; (2) the maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2009 for which the fleet-average valuation rule provided under section 1.61-21(d) of the regulations may be applicable is \$19,900 for a passenger automobile and \$19,900 for a truck or van.

SECTION 2. BACKGROUND

.01 If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. Internal Revenue Code § 61; Treas. Reg. § 1.61-21.

.02 For employer-provided passenger automobiles (including trucks and vans) made available to employees for personal use that meet the requirements of section 1.61-21(e)(1) of the regulations, generally the value of the personal use may be determined under the vehicle cents-per-mile valuation rule of section 1.61-21(e). However, regulations section 1.61-21(e)(1)(iii)(A) provides that for a passenger automobile first made available after 1988 to any employee of the employer for personal use, the value of the personal use may not be determined under the vehicle cents-per-mile valuation rule for a calendar year if the fair market value of the passenger automobile (determined pursuant to regulations section 1.61-21(d)(5)(i) through (iv)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.03 For employer-provided vehicles available to employees for personal use for an entire year, generally the value of the

personal use may be determined under the automobile lease valuation rule of section 1.61-21(d) of the regulations. Under this valuation rule, the value of the personal use is the Annual Lease Value. Provided the requirements of regulation section 1.61-21(d)(5)(v) are met, an employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the employer's fleet. The fleet-average value is the average of the fair market values of all the automobiles in the fleet. However, section 1.61-21(d)(5)(v)(D) of the regulations provides that for an automobile first made available after 1988 to an employee of the employer for personal use, the value of the personal use may not be determined under the fleet-average valuation rule for a calendar year if the fair market value of the automobile (determined pursuant to regulations section 1.61-21(d)(5)(i) through (v)) on the first date the passenger automobile is made available to the employee exceeds a specified dollar limit.

.04 The maximum passenger automobile values for applying the vehicle cents-per-mile and the fleet-average value rules reflect the automobile price inflation adjustment of Code section 280F(d)(7). The method of calculating this price inflation amount for automobiles other than trucks and vans uses the "new car" component of the CPI "automobile component". When calculating this price inflation adjustment for trucks and vans, the "new trucks" component of the CPI is used. This results in somewhat higher maximum values for trucks and vans. This change reflects the higher rate of price inflation that trucks and vans have been subject to since 1988, and is consistent with the change announced in Rev. Proc. 2003-75, 2003-2 C.B. 1018, for purposes of calculating depreciation deductions. See also Rev. Proc. 2008-22, 2008-12 I.R.B. 658. For purposes of this revenue procedure, the term "trucks and vans" refers to passenger automobiles that are built on a truck chassis, including minivans and sport utility vehicles (SUVs) that are built on a truck chassis.

SECTION 3. PROCEDURE

.01 Maximum Automobile Value for Using the Cents-per-mile Valuation Rule.

An employer providing a passenger automobile for the first time in calendar year 2009 for the personal use of any employee may determine the value of the personal use by using the vehicle cents-per-mile valuation rule in section 1.61-21(e) of the regulations if its fair market value on the date it is first made available does not exceed \$15,000 for a passenger automobile other than a truck or van, or \$15,200 for a truck or van. If the fair market value of the passenger automobile exceeds this amount, the employer may determine the value of the personal use under the general valuation rules of regulations section 1.61-21(b) or under the special valuation rules of section 1.61-21(d) (Automobile lease valuation) or section 1.61-21(f) (Commuting valuation) if the applicable requirements are met. See Rev. Proc. 2007-11, 2007-1 C.B. 261, for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2007, and Rev. Proc. 2008-13, 2008-6 I.R.B. 407, as modified by Announcement 2008-15, 2008-9 I.R.B. 511, for guidance on determining the maximum value of passenger automobiles first made available during calendar year 2008.

.02 Maximum Automobile Value for Using the Fleet-Average Valuation Rule.

An employer with a fleet of 20 or more automobiles providing an automobile for the first time in calendar year 2009 for the personal use of any employee for an entire year may determine the value of the personal use by using the fleet-average valuation rule in regulations section 1.61-21(d)(5)(v) to calculate the Annual Lease Values of the automobiles in the fleet. The fleet-average valuation rule may not be used to determine the Annual Lease Value of any automobile if its fair market value on the date it is first made available exceeds \$19,900 for a passenger automobile other than a truck or van, or \$19,900 for a truck or van. If all other applicable requirements are met, an employer with a fleet of 20 or more vehicles consisting of passenger automobiles other than trucks or vans as well as trucks and vans may use the fleet-average valuation rule as long as none of the vehicles exceed their respective maximum allowable values. If the fair market value of any passenger automobile in the fleet exceeds these amounts, the employer may determine the

value of the personal use under regulations section 1.61–21(f) (Commuting valuation) or the general valuation rules of section 1.61–21(b) or may determine the Annual Lease Value of such automobile separately under the automobile lease valuation rule of section 1.61–21(d)(2) if the applicable requirements are met.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to employer-provided passenger automobiles first made available to employees for personal use in calendar year 2009.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Don M. Parkinson of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding the maximum automobile value for applying the valuation rules of regulations section 1.61–21(e)(1)(iii)(A) (the vehicle cents-per-mile valuation rule), and section 1.61–21(d)(5)(v)(D) (the fleet average valuation rule), contact Don M. Parkinson at (202) 622–6040 (not a toll-free call).

26 CFR 31.6011(a)–1: Returns under Federal Insurance Contributions Act.

26 CFR 31.6011(a)–4: Returns of income tax withheld.

(Also: Part 1, § 6011; 26 CFR 31.6071(a)–1, 31.6091–1, and 31.6302–1.)

Rev. Proc. 2009–13

SECTION 1. PURPOSE

This revenue procedure sets forth the procedures for employers to follow to request to receive notification of their qualification to file Forms 944, *Employer’s ANNUAL Federal Tax Return*, and also sets forth the procedures for employers who were notified that they should file Form 944, *Employer’s ANNUAL Federal Tax Return*, who wish to request to file Forms 941, *Employer’s QUARTERLY Federal Tax Return*, instead for tax year 2009.

SECTION 2. BACKGROUND

.01 Form 944, *Employer’s ANNUAL Federal Tax Return*, was designed to reduce burden on small employers by permitting those employers to file one employment tax return to report their social security, Medicare, and withheld federal income taxes (referred to herein as their “employment tax liability”) for the entire taxable year instead of four employment tax returns (one for each quarter).

.02 The Treasury Department and the Internal Revenue Service (IRS) published a temporary regulation (T.D 9239, 2006–1 C.B. 401) related to Form 944 in the Federal Register (71 FR 11) on January 3, 2006. A notice of proposed rulemaking (REG–148568–04, 2006–1 C.B. 417) cross-referencing the temporary regulations was published in the Federal Register on the same day (71 FR 11). A correction to the temporary regulation was published in the Federal Register on March 17, 2006 (71 FR 13766). Revised temporary regulations (T.D. 9440) and proposed regulations (REG–148568–04) relating to Form 944 were published in the Federal Register (73 FR 79354 and 73 FR 79423) on December 29, 2008.

.03 For tax year 2009, employers are qualified to file Form 944 if their estimated annual employment tax liability is \$1,000 or less. See Treas. Reg. §§ 31.6011(a)–1T(a)(5)(i) and 31.6011(a)–4T(a)(4)(i). The IRS will notify employers in writing of their qualification to file Form 944. *Id.* Employers who continue to be eligible in subsequent years will not receive another notification. The IRS will notify employers in writing when they no longer qualify to file Form 944 and must file Forms 941 instead.

.04 Prior to the 2009 tax year, employers received written notification in one of three ways. Employers who had filed Forms 941 may have received a letter notifying them that the IRS had determined they were eligible based on the liability they reported on prior Forms 941. New employers may have received notification that they were eligible in the letter advising them of their employer identification number, depending on how they responded to lines 13 and 14 when they completed Form SS–4, *Application for Employer Identification Number*. Employers who

did not receive notification to file Form 944 in either of the two ways described above could call the IRS to determine if they were eligible and, if so, will receive a letter confirming their eligibility.

.05 Employers notified of their qualification to file Form 944 must file Form 944, *Employer’s ANNUAL Federal Tax Return*, for tax year 2009 rather than Forms 941, *Employer’s QUARTERLY Federal Tax Return*.

.06 Sections 31.6011(a)–1T(a)(5)(i)(B) and 31.6011(a)–4T(a)(4)(i)(B) of the temporary regulations provide that the IRS may establish procedures in published guidance for employers to follow to request to receive notification of their qualification to file Forms 944, *Employer’s ANNUAL Federal Tax Return*, and for employers to follow to opt to file Forms 941, *Employer’s QUARTERLY Federal Tax Return*, after receiving notification of their qualification to file Forms 944. This revenue procedure constitutes published guidance for purposes of Treas. Reg. §§ 31.6011(a)–1T(a)(5)(i)(B) and 31.6011(a)–4T(a)(4)(i)(B).

.07 Employers who file Forms 941 and 944 must deposit their employment tax liability in accordance with the rules in Treas. Reg. §§ 31.6302–1 and 31.6302–1T or, absent reasonable cause, the employers may be subject to the penalty for failure to deposit under section 6656. Generally, the same deposit rules apply to employers regardless of which form they file to report their employment tax liability; however, the *de minimis* deposit amount may be different. For more information on the deposit rules, see Publication 15 or the instructions to Forms 941 and 944 and the related Spanish-language returns or returns for U.S. possessions.

.08 For provisions relating to the time and place for filing returns, see Treas. Reg. §§ 31.6071(a)–1 and 31.6091–1, respectively.

SECTION 3. SCOPE

This revenue procedure applies to employers who are notified by the IRS that they should file Form 944 rather than Forms 941 and to qualified employers who choose to file Forms 944 beginning in the 2009 tax year.

SECTION 4. PROCEDURES

.01 *Employers eligible to opt out.* For tax year 2009, employers who are notified that they should file Form 944 may opt out if they timely notify the IRS that they satisfy at least one of the following conditions:

(1) The employer anticipates that its employment tax liability for tax year 2009 will be more than \$1,000; or

(2) The employer wants to file electronically quarterly Forms 941 for tax year 2009.

Employers who received notification to file Form 944 in prior years and did not previously opt out of filing Form 944 are eligible to opt out for tax year 2009 if they satisfy one of the conditions listed above.

.02 *Opt-out procedures.* Employers who satisfy one of the conditions in section 4.01 must call or write the IRS stating that they want to opt out of filing Form 944 before the applicable due date, as indicated below. Employers can find the appropriate IRS contact phone number and mailing address below.

(1) *Due dates.*

(a) *Employers who have previously filed Form 941 or Form 944 or the related Spanish-language returns or returns for U.S. possessions.* Employers who want to call to opt out of filing Form 944 must call the IRS on or before April 1, 2009. Employers who want to write to opt out of filing Form 944 must have their written correspondence postmarked on or before March 15, 2009.

(b) *New employers.* Businesses that recently received an employer identification number or had an employer identification number but were not previously required

to file Form 941 or Form 944 or the related Spanish-language returns or returns for U.S. possessions who want to call to opt out must call the IRS on or before the first day of the month that their first required Form 941 is due (i.e., call made on or before April 1, 2009, July 1, 2009, October 1, 2009, or January 1, 2010). Employers who want to write to opt out of filing Form 944 must have their written correspondence postmarked on or before the 15th day of the month before their first required Form 941 is due (i.e., correspondence postmarked on or before March 15, 2009, June 15, 2009, September 15, 2009, or December 15, 2009). For any due date that falls on a Saturday, Sunday, or legal holiday, the last day employers may call the IRS or have their written correspondence postmarked is the next business day following that Saturday, Sunday, or legal holiday.

(2) *Phone numbers.* Employers can call the IRS to opt out of filing Form 944 by using the following phone numbers:

(a) Employers in the United States, including Puerto Rico and the U.S. Virgin Islands, can call 1-800-829-4933.

(b) Employers in Guam can call 671-472-7471.

(c) All other international callers can call 01-215-516-2000 or the nearest IRS office.

(3) *Mailing Addresses.* Employers can write the IRS to opt out of filing Form 944 by using one of the two following mailing addresses:

Department of Treasury, Internal Revenue Service, Ogden, Utah 84201-0038 or Department of Treasury, Internal Revenue Service, Cincinnati, Ohio 45999-0038.

.03 *Confirmation of opt-out of filing Form 944.* The IRS will send written confirmation to employers that their filing requirement was changed to Form 941. Employers who are notified to file Form 944 and are not notified that their filing requirement was changed to Form 941 must file Form 944 rather than Forms 941.

.04 *Requests for Notification to File Form 944.* Beginning with the 2009 tax year, the IRS will send notification of eligibility to file Forms 944 only upon request by the qualified employer. Employers may request to receive such notification by calling the IRS at the telephone numbers identified in paragraph .02(2) above by the due dates identified in paragraph .02(1) above. Employers who previously received notification of their qualification to file Forms 944 must continue to file Forms 944 unless they opt out consistent with the procedures described above.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on January 1, 2009.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Raymond Bailey and Audra Dineen of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Raymond Bailey or Audra Dineen at (202) 622-4910 (not a toll-free call).

26 CFR 601.202: Closing agreements. (Also Part I, §§ 446, 482, 7121; 1.446-1, 301.7121-1.)

Rev. Proc. 2009-14

TABLE OF CONTENTS

SECTION 1. PURPOSE 326
SECTION 2. BACKGROUND 326
SECTION 3. SCOPE 326
.01 Eligible taxpayers 326
.02 Eligible taxable years 326

.03 Eligible issues generally	326
.04 Relationship of eligible issues to eligible taxable years	326
.05 Eligible domestic and eligible international issues require coordination and consultation with Associate Chief Counsel	326
.06 Eligible international issues requiring Associate Chief Counsel (International) concurrence in execution	326
.07 Special provisions for requests on international issues	327
.08 Excluded issues	327
.09 Methods of accounting	328
.10 Definition of taxpayer	328
SECTION 4. REQUESTING A PRE-FILING AGREEMENT	328
.01 Required information	328
.02 Specific descriptions of issues	328
.03 Perjury statement	328
.04 Agreement regarding examination or inspection of records	329
.05 Signature	329
.06 Where to submit request	329
SECTION 5. SELECTING TAXPAYERS FOR THE PFA PROGRAM	329
.01 Jurisdiction of LMSB Industry Director and coordination and consultation with the Associate Chief Counsel	329
.02 Criteria for selection	329
.03 Notification	329
.04 Requests not accepted	329
SECTION 6. PROCESSING A REQUEST FOR A PFA	329
.01 Planning	329
.02 Continuing coordination	329
.03 Drafting	330
.04 Return filing requirements	330
.05 TEFRA taxpayers	330
.06 Execution prior to filing	330
.07 Execution after filing	330
SECTION 7. NATURE AND EFFECT OF A PFA	330
.01 Criteria for issuance	330
.02 Form and content	330
.03 Methods and periods of accounting	330
SECTION 8. WITHDRAWAL	331
SECTION 9. NO PFA EXECUTED	331
.01 Post-filing procedures	331
.02 Administrative appeals	331
SECTION 10. USER FEE	331
.01 Taxpayers subject to fees	331
.02 Amount of fee	331
.03 Time and method of payment	331
.04 Withdrawal	331
SECTION 11. DISCLOSURE	331
SECTION 12. EFFECTIVE DATE AND DURATION OF PROCEDURE	331
SECTION 13. EFFECT ON OTHER DOCUMENTS	331
SECTION 14. RECORDKEEPING REQUIREMENTS	331
SECTION 15. PAPERWORK REDUCTION ACT	331

SECTION 1. PURPOSE

.01 This revenue procedure permits a taxpayer under the jurisdiction of the Large and Mid-Size Business Division to request that the Service examine specific issues relating to tax returns before those returns are filed. This revenue procedure supersedes Rev. Proc. 2007-17, 2007-4 I.R.B. 368. This revenue procedure provides the framework within which a taxpayer and the Service may work together in a cooperative environment to resolve, after examination, issues accepted into the program. If the taxpayer and the Service are able to resolve the examined issues before the returns that they affect are filed, this revenue procedure authorizes the taxpayer and the Service to memorialize their agreement by executing an LMSB Pre-Filing Agreement (PFA).

.02 This revenue procedure outlines the procedures for resolving issues through pre-filing examinations. Taxpayers and the Service often resolve issues more effectively and efficiently through a pre-filing examination than a post-filing examination, because the taxpayer and the Service have more timely access to the records and personnel that are relevant to the issues. A pre-filing examination also provides the taxpayer with certainty regarding the examined issue at an earlier point than a post-filing examination. These procedures benefit both taxpayers and the Service by improving the quality of tax compliance while reducing costs, burdens, and delays. Unlike letter rulings and other forms of written advice provided by the Offices of the Associates Chief Counsel (see Rev. Proc. 2008-1, 2008-1 I.R.B. 1), a PFA does not determine the tax treatment of prospective or future transactions or events, but only of completed transactions or events whose tax treatment has not yet been reported on a return.

SECTION 2. BACKGROUND

.01 In Rev. Proc. 2001-22, 2001-1 C.B. 745, the Service provided procedures for LMSB taxpayers to request an examination and resolve specific issues relating to returns that were neither due (taking into account any extensions of time to file) nor filed.

.02 Because Rev. Proc. 2001-22 limited the eligible years for the PFA program to current or prior taxable years for which returns were neither due nor filed, taxpayers and the Service could not resolve issues for multiple future taxable years or issues regarding appropriate methodologies for determining tax consequences that would affect future taxable years. In Rev. Proc. 2005-12, the Service expanded the scope of the PFA program by allowing taxpayers and the Service to address certain issues over a limited number of future taxable years. In addition, the Service revised the domestic and international issues eligible for the PFA program.

.03 In Rev. Proc. 2007-17, the Service renewed the PFA program with minimal changes, clarifying the procedures for processing a PFA request and updating the user fee requirements for a PFA. Section 12 of Rev. Proc. 2007-17 provided that the revenue procedure would remain in effect until December 31, 2008, unless sooner revoked, modified, or superseded.

.04 The objective of the PFA program remains to resolve, before returns are filed, issues that are likely to be disputed in post-filing audits. This revenue procedure makes the PFA program permanent.

SECTION 3. SCOPE

.01 *Eligible taxpayers.* This revenue procedure applies to taxpayers under the jurisdiction of LMSB that desire to resolve issues that otherwise may be the subject of a post-filing examination through a PFA.

.02 *Eligible taxable years.*

(1) Current, past, and future taxable years. An eligible taxpayer may request a PFA for the current taxable year, any prior taxable year for which the original return is not yet due (taking into account any extensions of time to file) and is not yet filed and, except in the case of a PFA provided under section 3.09(2), for a limited number of future taxable years.

(2) Agreements for future taxable years. Agreements for future taxable years are limited to four taxable years beyond the current taxable year.

.03 *Eligible issues generally.*

(1) *Factual issues and well-established law.* The Service will consider entering into a PFA on any issue that requires ei-

ther a determination of facts or the application of well-established legal principles to known facts.

(2) *Issues that involve a methodology.* The Service also will, in general, consider entering into a PFA regarding a methodology used by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit.

(3) *Issues under the jurisdiction of other Service divisions.* The Service will consider entering into a PFA on an issue under the jurisdiction of an operating division of the Service other than LMSB, but only with the concurrence of that operating division.

.04 *Relationship of eligible issues to eligible taxable years.* An issue also must relate to an eligible taxable year or years in order to be an eligible issue.

.05 *Eligible domestic and eligible international issues require coordination and consultation with Associate Chief Counsel.* There is no list of eligible domestic and international issues. Any domestic or international issue that requires either a determination of facts or application of well-established legal principles to known facts and that is not excluded under section 3.08 or section 3.09 of this revenue procedure is likely suitable for a PFA.

The Service may, in its sole discretion, refuse to address an issue in a PFA based on considerations of sound tax administration. Before any decision is made to proceed with the taxpayer's request for a PFA, the Service must coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA. As part of this coordination and consultation, the Associate Chief Counsel may consider whether the issue is more appropriately resolved by a letter ruling or other form of written advice from the Offices of the Associate Chief Counsel, as described in Rev. Proc. 2008-1, 2008-1 I.R.B. 1, or its successors, and whether the issue is currently one with respect to which the Service will not, or will not ordinarily, issue a letter ruling. See Rev. Proc. 2008-3, 2008-1 I.R.B. 110, Rev. Proc. 2008-7, 2008-1 I.R.B. 229, and their successors.

.06 *Eligible international issues requiring Associate Chief Counsel (Inter-*

national) concurrence in execution. This subsection lists specific international issues that are *likely* suitable for a PFA, but also require that the Associate Chief Counsel (International) concur with the acceptance of the issue into the PFA Program and execution of the PFA. Even though an issue in a particular case appears on this list, the Service may, in its sole discretion, refuse to address that issue based on considerations of sound tax administration. The eligible issues are:

(1) whether a unit of the taxpayer's trade or business is a qualified business unit within the meaning of section 989(a) and the regulations promulgated under that section;

(2) whether the taxpayer is engaged in a trade or business within the United States (excluding questions under section 864(b)(2));

(3) the amount of gross income that is effectively connected with the conduct by the taxpayer of a trade or business within the United States (see Rev. Proc. 2008-31, 2008-23 I.R.B. 1133 (Advance Pricing Agreement program));

(4) factual determinations concerning the extent to which, under section 882(c), deductions are connected with income that is effectively connected with the taxpayer's conduct of a trade or business within the United States; and

(5) whether the taxpayer has a permanent establishment in the United States for purposes of a bilateral income tax convention to which the United States is a party and, if so, what profits are attributable to that permanent establishment. See Rev. Proc. 2008-31.

.07 Special provisions for requests on international issues. The provisions of this section apply, in addition to the generally applicable provisions of this revenue procedure, to any request for a PFA on an issue having international implications.

(1) A PFA and any factual information contained in the background files is subject to exchange of information under income tax treaties or tax information exchange agreements in accordance with the terms of such treaties and agreements (including terms regarding relevancy, confidentiality, and the protection of trade secrets). In cases where the exchange of information would be discretionary, information may be exchanged to the extent consistent with

sound tax administration and the practices of the relevant foreign competent authority.

(2) To minimize taxpayer and governmental uncertainty and administrative cost, taxpayers that seek a PFA on an international issue are encouraged to seek competent authority consideration under the mutual agreement procedure of any applicable United States income tax convention. This consideration will be given after the PFA is concluded, and the PFA may be modified to reflect the outcome of the mutual agreement procedure.

(3) A taxpayer may request a PFA for an international issue that is the subject of a previously submitted request for competent authority assistance. The consideration of this competent authority request will not be suspended during the PFA process. If the taxpayer requests a PFA and the previously submitted request for competent authority assistance is ongoing, if appropriate, the taxpayer also should make a request for the Accelerated Competent Authority Procedure of Rev. Proc. 2006-54, 2006-2 C.B. 1035.

.08 Excluded issues. The Service will not enter into a PFA on the following types of issues:

(1) Transfer pricing issues. See Rev. Proc. 2006-9, 2006-1 C.B. 278, Rev. Proc. 2008-31, and their successors;

(2) Except as provided in section 3.09(2) of this revenue procedure, issues involving a change in accounting method. See Treas. Reg. § 1.446-1(e). This includes issues that are or have been the subject of a request by or with respect to the taxpayer for consent to change a method of accounting under procedures such as Rev. Proc. 97-27, 1997-1 C.B. 680 (as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432), or its predecessor or successor, or of an application filed under automatic consent procedures such as Rev. Proc. 2008-52, 2008-36 I.R.B. 587, or its predecessor or successor. This also includes issues for which a change in accounting method is necessary to resolve the issue. A taxpayer must obtain consent to make an accounting method change by using applicable administrative procedures. See generally Rev.

Proc. 97-27 and Rev. Proc. 2008-52, or their successors;

(3) Issues involving the annual accounting period. See Treas. Reg. § 1.442-1. This includes issues that are or have been the subject of a request by or with respect to the taxpayer for permission to adopt, change, or retain an annual accounting period under procedures such as Rev. Proc. 2002-39, 2002-1 C.B. 1046 (as clarified and modified by Notice 2002-72, 2002-2 C.B. 843, and as modified by Rev. Proc. 2003-34, 2003-1 C.B. 856), or an application filed under automatic procedures such as Rev. Proc. 2002-37, 2002-1 C.B. 1030, and Rev. Proc. 2002-38, 2002-1 C.B. 1037, or their predecessors or successors. This also includes issues for which a ruling regarding an annual accounting period is necessary to resolve the issue;

(4) Issues of reasonable cause, due diligence, good faith, clear and convincing evidence, or any other similar standard under Subtitle F (Procedure and Administration) of the Internal Revenue Code;

(5) Issues involving the applicability of any penalty or criminal sanction;

(6) Issues that are, or will be, the subject of a pending or proposed request for a determination letter, technical advice memorandum, or letter ruling issued to or regarding the taxpayer;

(7) Issues for which the taxpayer proposes a resolution that is contrary to a letter ruling, determination letter, technical advice memorandum, or closing agreement previously issued to or regarding the taxpayer;

(8) Issues for which the taxpayer proposes a resolution that is contrary to a position proposed by the Service in response to a request for a letter ruling or determination letter that was withdrawn by the taxpayer;

(9) Issues that are the subject of pending litigation between the Service and the taxpayer for an earlier taxable year;

(10) Issues designated for litigation for an earlier taxable year of the taxpayer by the Office of Chief Counsel;

(11) Issues that involve a tax shelter described in section 6662(d)(2)(C)(ii);

(12) Issues that require the Service to determine whether the taxpayer, rather than another entity, is the common law employer; and

(13) Issues relating to transactions that have not yet occurred, regardless

of whether the issue otherwise would qualify as one on which the Service will issue letter rulings or other forms of written guidance as described in Rev. Proc. 2008-1, 2008-1 I.R.B. 1, and successor revenue procedures.

.09 Methods of accounting.

(1) Except as provided in section 3.09(2) of this revenue procedure, the Service will not enter into a PFA for issues relating to a change in method of accounting. In applying the law to the facts, or establishing the facts, a change in the overall plan of accounting for gross income or deductions from the treatment of such items in prior taxable years, or a change in the treatment of any item that involves the proper time for the inclusion of an item or the taking of an item as a deduction from the treatment of such item in prior taxable years generally may be a change in method of accounting. A PFA may not be used to change a taxpayer's method of accounting.

(2) If the Service has issued a letter ruling granting consent to a change in method of accounting under Rev. Proc. 97-27, or its successor, a taxpayer may request and the Service may enter into a PFA with respect to the approved change in method of accounting. In such case, a PFA may include determinations described in section 11 of Rev. Proc. 97-27 or a similar provision of its successor. Thus, for example, a taxpayer may request and the Service may enter into a PFA with respect to the amount of the section 481(a) adjustment and the implementation of the change in method of accounting in accordance with the terms and conditions of the consent agreement and Rev. Proc. 97-27. A PFA under this provision may only apply to the taxable year of change and may not apply to any other taxable years, except that a determination of the amount of the section 481(a) adjustment under section 11.01(2) of Rev. Proc. 97-27, or a successor, shall apply to any other taxable year for which such amount is taken into account (*i.e.*, any spread period). A PFA under this provision may not be entered into with respect to a change in method of accounting requested pursuant to automatic consent procedures, such as Rev. Proc. 2008-52.

.10 Definition of taxpayer. For purposes of section 3 of this revenue procedure, any reference to the taxpayer also in-

cludes a related taxpayer and any predecessor of the taxpayer or a related taxpayer. A related taxpayer is one related within the meaning of section 267 or a member of an affiliated group within the meaning of section 1504 that includes the taxpayer. A predecessor is an entity for whose tax liability the taxpayer or a related taxpayer is or was primarily or secondarily liable.

SECTION 4. REQUESTING A PRE-FILING AGREEMENT

.01 Required information. A request for a PFA must contain the following information:

(1) Names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties;

(2) The name, title, address, and telephone number of a person to contact. If the person to contact is an authorized representative of the taxpayer, a properly executed Form 2848, *Power of Attorney and Declaration of Representative*, must accompany the request;

(3) The annual accounting period and the overall method of accounting (for example, cash receipts and disbursements or accrual) for maintaining the accounting books and filing the federal income tax returns of all interested parties;

(4) The location of the taxpayer's tax staff and records;

(5) A brief description of the taxpayer's business operations, including the principal business activity code used by the taxpayer on its last filed return;

(6) The taxable year(s) for which the PFA is sought, the last date on which the taxpayer may file (with extensions) a timely return for that year (or for the first of those taxable years), and, if earlier, the date on which the taxpayer intends to file that return; and

(7) The dollar amount of assets reflected on the most recently filed return.

.02 Specific descriptions of issues. A request for a PFA should also contain a separate written statement for each proposed issue that concisely:

(1) Describes the issue;

(2) Summarizes all the facts that are relevant and material to the issue and, in the case of agreements for future taxable years, any related factual assumptions that may be appropriate (see section 7.02(2), below);

(3) States whether the issue involves an item or transaction in which two or more persons may take contrary positions (a "whipsaw" issue);

(4) Summarizes all relevant legal authorities, including citations to specific sections of the Internal Revenue Code, Income Tax Regulations, case law, tax treaties, and other authorities, and discusses why the issue is an eligible issue, as defined in section 3 of this revenue procedure;

(5) Summarizes and discusses the implications of any known authorities that may be contrary to the position advanced, such as legislation (or pending legislation), court decisions, regulations, revenue rulings, revenue procedures, notices (including notices of proposed rulemaking), or announcements;

(6) Discusses whether and how the PFA will affect taxable years before or after the taxable year for which the PFA is sought;

(7) Describes any proposed methodology to be used;

(8) Discusses whether the issue qualifies for mutual agreement procedure consideration under any United States income tax treaty, specifies the treaty, and states whether the taxpayer previously applied or will apply for competent authority assistance with respect to the issue for the year or years in question or any prior year;

(9) States whether the taxpayer has, for the current taxable year or any prior taxable year, requested a letter ruling (including a request for consent to a change in method of accounting or a request to adopt, change, or retain an annual accounting period), determination letter, or technical advice on the issue;

(10) Discusses whether the issue can reasonably be resolved by the earliest date on which the taxpayer intends to file any relevant return; and

(11) Describes the availability, organization, and location of the records and other information that substantiate the taxpayer's proposed position on the issue.

.03 Perjury statement. A request for a PFA, and any supplemental submissions (including additional documents), must include a declaration, signed by a person currently authorized to sign the taxpayer's federal income tax return, in the following form:

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request for the Pre-Filing Agreement are true, correct, and complete.

.04 *Agreement regarding examination or inspection of records.* The request for a PFA also must contain a statement by the taxpayer in the following form:

The taxpayer agrees that the review of records and information under the PFA procedures does not constitute an inspection within the meaning of section 7605(b) and will not preclude or impede (under section 7605(b) or any administrative provisions adopted by the Service) the Service from later examining any return or inspecting any records. The taxpayer further agrees that procedural restrictions, such as providing notice under section 7605(b), do not apply to actions taken under the PFA procedures.

.05 *Signature.* The request for a PFA must be signed by the taxpayer or a representative properly authorized by the taxpayer in an accompanying Form 2848, *Power of Attorney and Declaration of Representative*.

.06 *Where to submit request.*

(1) In the case of a taxpayer whose return for any taxable year is currently under examination by LMSB, a request for a PFA should be submitted to the LMSB Team Manager in charge of the examination; or

(2) In the case of a taxpayer who has no returns under examination for any taxable year, a request for a PFA should be sent by any of the following methods:

(a) mail to the following address:

Internal Revenue Service
Attn: LMSB:PFT:PFS
PFA Program Manager
Mint Building
1111 Constitution Avenue, NW
Washington, DC 20224;

(b) facsimile transmission to the attention of the PFA Program Manager at (202) 283-8406 (not a toll-free call); or

(c) electronic transmission to pfa.info@irs.gov.

SECTION 5. SELECTING TAXPAYERS FOR THE PFA PROGRAM

.01 *Jurisdiction of LMSB Industry Director and coordination and consultation with the Associate Chief Counsel.* The LMSB Industry Director having jurisdiction over the taxpayer, after coordination and consultation with the Associate Chief Counsel having subject matter jurisdiction over any issue proposed to be determined by a PFA, will decide whether to accept the taxpayer's request for a PFA. (For purposes of this revenue procedure, the term "LMSB Industry Director" includes a duly authorized designee of an LMSB Industry Director.) The decision regarding the acceptance of any PFA involving an international issue also will require the concurrence of the Deputy Commissioner, International (LMSB). In general, the Associate Chief Counsel will respond within 10 business days to a request for coordination and consultation to proceed with the PFA.

.02 *Criteria for selection.* The criteria for selecting taxpayers to participate in the PFA program include, but are not limited to:

(1) Whether the specific issue presented by the taxpayer's facts is an eligible issue under section 3 of this revenue procedure and is otherwise suitable for the PFA program;

(2) The direct or indirect impact of a PFA upon other years, issues, taxpayers, or related cases;

(3) Whether Service resources are available;

(4) Whether the taxpayer is willing and able to dedicate sufficient resources to the PFA process;

(5) Whether the PFA is likely to result in two or more persons taking contrary positions on an item or transaction (a "whip-saw" issue);

(6) The time remaining until the due date and expected filing date, if earlier than the due date, of the earliest return to which the PFA relates; and

(7) The overall probability of completing the process and entering into a PFA by the proposed date for filing the earliest return to which the PFA relates.

Early submission of a request will facilitate completion of a PFA before any associated returns become due. As a result, early requests are more likely to be se-

lected for the PFA program and the Service urges taxpayers to submit PFA requests as early as possible.

.03 *Notification.* A representative of LMSB will contact the taxpayer within 15 business days of actual receipt of the taxpayer's request for a PFA to acknowledge that the Service has received the request. After a PFA request is received, a representative of LMSB will inform the taxpayer in writing whether the request has been selected for the PFA program and the issues the Service will consider.

.04 *Requests not accepted.* A taxpayer may not appeal the Service's decision not to accept a request for a PFA. A taxpayer not selected for the PFA program remains eligible for other early issue resolution procedures, including the Accelerated Issue Resolution (AIR) program (see Rev. Proc. 94-67, 1994-2 C.B. 800).

SECTION 6. PROCESSING A REQUEST FOR A PFA

.01 *Planning.* If the Service accepts the taxpayer's request for a PFA, a representative of LMSB will contact the taxpayer and schedule an orientation meeting with the taxpayer and examination personnel to discuss the PFA process and explain the roles and responsibilities of each participant. Immediately after the orientation meeting, the taxpayer and the Service should meet to formulate a plan and timeline that will result in a thorough development of the facts and a successful resolution of the issues before any associated returns are due. During the planning phase and throughout the PFA process, the taxpayer must provide information requested by the Service and assist the Service in the timely and efficient resolution of the examined issues. If, at any time after a request for a PFA has been accepted, the facts that are relevant and material to the request for a PFA significantly change or, in the case of proposed agreements for future taxable years, any factual assumptions that may be appropriate significantly change, the taxpayer must promptly inform the Service through the examination team assigned to the PFA.

.02 *Continuing coordination.* After a request for a PFA has been accepted, the LMSB Industry Director having jurisdiction over the PFA request will, through

the examination team and local counsel assigned to the PFA, coordinate and consult with the Associate Chief Counsel having subject matter jurisdiction over the issue proposed to be determined by the PFA to ensure that that issue remains suitable for a PFA. The LMSB Industry Director will, through the examination team and local counsel assigned to the PFA, inform the Associate Chief Counsel if, at any time after a request for a PFA has been accepted, the facts that are relevant and material to the issue significantly change or, in the case of agreements for future taxable years, any factual assumptions that may be appropriate significantly change.

.03 *Drafting.* After the development of the facts and issues, the Team Manager will meet informally with the taxpayer to determine whether the parties agree on a PFA. If the parties reach agreement, the taxpayer will work with the Service to prepare the initial draft of the PFA. The PFA will be prepared by the taxpayer and the audit team with assistance, as necessary, from the PFA Program Manager, the Office of Chief Counsel, or other Service personnel. Except as provided in section 3.06, the Associate Chief Counsel having subject matter jurisdiction over the issue in the PFA need not execute or give final approval to the proposed PFA; however, upon execution of the PFA, the PFA Program Manager will immediately forward a copy of the PFA to the office of that Associate Chief Counsel.

.04 *Return filing requirements.* The Service's acceptance of a taxpayer's request for a PFA does not suspend or waive the normal filing requirements for any tax returns that may be affected by the proposed PFA.

.05 *TEFRA taxpayers.* If the procedures set forth in sections 6221 through 6233 apply to the taxpayer requesting the PFA and the issue determined by the PFA is a partnership item as defined in section 6231, the PFA process will be terminated for that issue if no agreement is reached with all partners by the date that is 30 business days before the due date for the partnership return (taking into account any extensions of time to file that may be in effect).

.06 *Execution prior to filing.* If a PFA is executed before a return is filed, the taxpayer must report the issues determined by the PFA according to the terms and condi-

tions of the PFA. A copy of the PFA must be attached to the return.

.07 *Execution after filing.* If the Service and the taxpayer do not reach agreement on an issue before the taxpayer files an associated return, the Service and the taxpayer may still attempt to resolve the issue and enter into a PFA. If the filed return is inconsistent with the terms and conditions of the contemplated PFA, the taxpayer must agree to file an amended return consistent with those terms and conditions. A post-filing PFA should state whether the taxpayer is required to file an amended return. It should further state that the Service may assess additional tax due, if any, if an amended return is not filed. The taxpayer must attach a copy of the PFA to any amended return.

SECTION 7. NATURE AND EFFECT OF A PFA

.01 *Criteria for issuance.* An authorized Service official may execute a PFA if that official determines that:

(1) Entering into the PFA is consistent with the goals of the PFA program;

(2) The resolution of issues in the PFA reflects well-settled legal principles and correctly applies those principles to the facts established by the examination team;

(3) The issues determined by the PFA are eligible issues under section 3 of this revenue procedure;

(4) Any methodology approved for use by a taxpayer to determine the appropriate amount of an item of income, allowance, deduction, or credit has a documented factual basis; and

(5) There is an advantage in having the issues permanently and conclusively resolved for the taxable years covered by the PFA, or the taxpayer shows good and sufficient reasons for desiring a PFA and the United States will suffer no disadvantage if the agreement is executed.

.02 *Form and content.*

(1) A PFA that makes determinations for the current taxable year (and any prior taxable year for which a return is not yet due) is a closing agreement under section 7121. The form and content of this type of PFA must comply with Rev. Proc. 68-16, 1968-1 C.B. 770.

(2) A PFA that makes a determination for one or more future taxable years as

well as for the current taxable year (and any prior taxable year for which a return is not yet due) is a non-statutory agreement. Although not a closing agreement under section 7121, this type of PFA is a binding contract between the Service and a taxpayer. It is subject to any legislative enactment that is applicable to the taxable years to which the PFA relates. There is no prescribed format for such an agreement. The parties to a non-statutory agreement may, by mutual consent (and, if applicable, the further mutual agreement between the United States and any treaty partner that has entered into a mutual agreement that is a basis for the PFA), modify or terminate the agreement. A taxpayer who wants to modify or terminate a non-statutory agreement should submit a request to the office that originally processed the taxpayer's request for a PFA. The parties to a non-statutory agreement also may condition its determinations on the continuing validity of certain stated assumptions. A "stated assumption" is any fact (whether or not within the control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions whose continued existence is material to the determinations of the PFA. A stated assumption might include, for example, a particular mode of conducting business operations. If a stated assumption is no longer valid, a non-statutory agreement conditioned on such stated assumption will terminate as of the first day of the taxable year in which the stated assumption is no longer valid.

(3) A PFA concerning international issues will not be subject to the special limitation of section 7.05, *Effect of Agreements or Judicial Determinations on Competent Authority Proceedings*, of Rev. Proc. 2006-54, 2006-2 C.B. 1035, which sets forth the effect of a closing agreement on the procedure for competent authority consideration under the mutual agreement procedure of United States income tax conventions.

.03 *Methods and periods of accounting.*

(1) A PFA does not constitute the consent of the Commissioner under section 446(e) to any change in method of accounting or the approval under section 442 of any adoption, change, or retention of an annual accounting period by the taxpayer.

(2) A PFA does not constitute a final determination regarding the adoption, change, or retention of an annual accounting period by the taxpayer.

(3) A PFA does not constitute a final determination regarding the methods of accounting of the taxpayer for any taxable year, except to the extent authorized by section 3.09(2).

(4) A PFA authorized under section 3.09(2) must include the following agreement:

Nothing in this agreement precludes the taxpayer from requesting, or the Service from requiring, a change in the taxpayer's method of accounting for years after the year of change.

SECTION 8. WITHDRAWAL

.01 At any time prior to the execution of the PFA, either the taxpayer or the Service may withdraw from consideration all or part of the request for a PFA. The withdrawal must be in writing and signed by the party initiating the withdrawal, *i.e.*, the taxpayer or his authorized representative or the Industry Director, Director Field Operations, or the Director Field Specialists.

.02 Notwithstanding the withdrawal by either the taxpayer or the Service of any or all the issues that are the subject of the request for a PFA, the taxpayer's agreement under section 4.04 of this revenue procedure will remain in effect.

SECTION 9. NO PFA EXECUTED

.01 *Post-filing procedures.* If the Service and the taxpayer do not agree upon and execute a PFA that resolves an issue, either before or after the filing of the return to which the PFA relates, and the Service subsequently disagrees with the taxpayer's treatment of the issue on the return, the taxpayer and the Service may continue their efforts to reach an agreement using post-filing procedures, such as the Accelerated Issue Resolution (AIR) procedures under Rev. Proc. 94-67, 1994-2 C.B. 800. This continuation of the process does not require a new application.

.02 *Administrative appeals.* If the Service and the taxpayer are unable to resolve an issue by a PFA or an AIR agreement, the taxpayer may pursue an administrative appeal either by requesting an early referral

to Appeals under the procedures set forth in Rev. Proc. 99-28, 1999-2 C.B. 109, or by protesting any proposed deficiency related to the issue.

SECTION 10. USER FEE

.01 *Taxpayers subject to fees.* Taxpayers are subject to a user fee only if they are selected to participate in the PFA program.

.02 *Amount of fee.* The user fee for taxpayers selected to participate in the PFA program is \$50,000, or as provided for in Rev. Proc. 2008-1, 2008-1 I.R.B. 1, and its successors. A fee will be assessed for each separate and distinct issue. The orientation meeting or the first substantive meeting with the taxpayer to discuss the PFA issues will not take place until after the fee is received.

.03 *Time and method of payment.* Payment of the user fee must be made within 15 business days of notification that the issues have been selected for the PFA program. Payment must be made by check or money order payable to the Internal Revenue Service and submitted to the address in the letter notifying the taxpayer of acceptance into the PFA program.

.04 *Withdrawal.* Notwithstanding the withdrawal by either the taxpayer or the Service of any or all of the issues in the request for a PFA after acceptance of the request, the user fee paid by the taxpayer generally will not be refundable. A refund or waiver of the user fee will not be entertained unless a hardship has occurred (for example, a disaster loss) or if other circumstances beyond the control of the taxpayer exist. The Industry Director has discretion in granting a request for a refund of a user fee based on considerations of sound tax administration.

SECTION 11. DISCLOSURE

PFAs are agreements described in section 6103(b)(2)(D). A PFA and the information generated or received by the Service during the PFA process constitute confidential return information. Consistent with the restrictions of section 6103, the Service will continue to publish annual reports summarizing the operation of the PFA program. PFAs are not written determinations available for public inspection under section 6110. PFAs are exempt from

disclosure to the public under the Freedom of Information Act.

SECTION 12. EFFECTIVE DATE AND DURATION OF PROCEDURE

This revenue procedure is effective on January 1, 2009 and will remain in effect unless revoked, modified, or superseded.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2007-17, 2007-4 I.R.B. 368, is superseded.

SECTION 14. RECORDKEEPING REQUIREMENTS

.01 No aspect of the PFA process will affect the recordkeeping requirements imposed by any section of the Internal Revenue Code.

.02 The taxpayer must maintain a copy of the PFA supporting documents and books of account and records to enable the Service to ensure the taxpayer's compliance with the PFA. These records may be specified in the PFA itself or in separate agreements.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545-1684.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The collections of information in this revenue procedure are in sections 4, 6, and 14. The information collected under section 4 is required to provide the Service with the information necessary to determine which taxpayers should be included in the PFA program. The information collected under section 6 will be used to resolve the taxpayer's issue and to support any PFA entered into between the taxpayer and the Service. The recordkeeping requirements under section 14 will be used for tax administration. The collections of information under sections 4 and 6 are voluntary.

Once a PFA is entered into, the record-keeping requirements under section 14 are mandatory. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 13,134 hours.

The estimated annual burden per respondent varies from 5 hours to 1,092 hours, depending on whether a taxpayer applying to the PFA program is accepted into the program. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are accepted is 1,092 hours. The estimated annual burden per respondent for taxpayers who apply to the PFA program and are not

accepted is 5 hours. The estimated number of taxpayers who apply to the PFA program and are accepted is 12. The estimated number of taxpayers who apply to the PFA program and are not accepted is 6. The estimated total number of applicants and/or recordkeepers is 18.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained so long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is Kevin Gillin of the Office of Associate Chief Counsel (Procedure & Administration). For further information about this revenue procedure, contact Melanie Perrin, Senior Program Analyst, LMSB Office of Pre-Filing and Technical Guidance, at (202) 283-8408 (voice) (not a toll-free call), (202) 283-8406 (fax) (not a toll-free call).

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 2009–1 through 2009–3

Announcements:

2009-1, 2009-1 I.R.B. 242

Notices:

2009-1, 2009-2 I.R.B. 250

2009-3, 2009-2 I.R.B. 250

2009-4, 2009-2 I.R.B. 251

2009-5, 2009-3 I.R.B. 309

2009-6, 2009-3 I.R.B. 311

2009-7, 2009-3 I.R.B. 312

Revenue Procedures:

2009-1, 2009-1 I.R.B. 1

2009-2, 2009-1 I.R.B. 87

2009-3, 2009-1 I.R.B. 107

2009-4, 2009-1 I.R.B. 118

2009-5, 2009-1 I.R.B. 161

2009-6, 2009-1 I.R.B. 189

2009-7, 2009-1 I.R.B. 226

2009-8, 2009-1 I.R.B. 229

2009-9, 2009-2 I.R.B. 256

2009-10, 2009-2 I.R.B. 267

2009-11, 2009-3 I.R.B. 313

2009-12, 2009-3 I.R.B. 321

2009-13, 2009-3 I.R.B. 323

2009-14, 2009-3 I.R.B. 324

Revenue Rulings:

2009-1, 2009-2 I.R.B. 248

2009-2, 2009-2 I.R.B. 245

Treasury Decisions:

9436, 2009-3 I.R.B. 268

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2008–27 through 2008–52 is in Internal Revenue Bulletin 2008–52, dated December 29, 2008.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2009–1 through 2009–3

Notices:

2001-55

Modified by

Notice 2009-1, 2009-2 I.R.B. 250

2007-54

Obsoleted by

T.D. 9436, 2009-3 I.R.B. 268

2008-11

Obsoleted by

T.D. 9436, 2009-3 I.R.B. 268

2008-12

Obsoleted by

T.D. 9436, 2009-3 I.R.B. 268

Rev. Proc. 2009-11, 2009-3 I.R.B. 313

2008-13

Obsoleted by

T.D. 9436, 2009-3 I.R.B. 268

List of forms modified and superseded by

Rev. Proc. 2009-11, 2009-3 I.R.B. 313

Modified and clarified by

Notice 2009-5, 2009-3 I.R.B. 309

2008-46

Obsoleted by

T.D. 9436, 2009-3 I.R.B. 268

Rev. Proc. 2009-11, 2009-3 I.R.B. 313

Revenue Procedures:

2007-17

Superseded by

Rev. Proc. 2009-14, 2009-3 I.R.B. 324

2007-71

Modified by

Notice 2009-3, 2009-2 I.R.B. 250

2008-1

Superseded by

Rev. Proc. 2009-1, 2009-1 I.R.B. 1

2008-2

Superseded by

Rev. Proc. 2009-2, 2009-1 I.R.B. 87

2008-3

Superseded by

Rev. Proc. 2009-3, 2009-1 I.R.B. 107

2008-4

Superseded by

Rev. Proc. 2009-4, 2009-1 I.R.B. 118

2008-5

Superseded by

Rev. Proc. 2009-5, 2009-1 I.R.B. 161

Revenue Procedures— Continued:

2008-6

Superseded by

Rev. Proc. 2009-6, 2009-1 I.R.B. 189

2008-7

Superseded by

Rev. Proc. 2009-7, 2009-1 I.R.B. 226

2008-8

Superseded by

Rev. Proc. 2009-8, 2009-1 I.R.B. 229

2008-9

Superseded by

Rev. Proc. 2009-9, 2009-2 I.R.B. 256

2008-61

Superseded by

Rev. Proc. 2009-3, 2009-1 I.R.B. 107

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2008–27 through 2008–52 is in Internal Revenue Bulletin 2008–52, dated December 29, 2008.



**U.S. GOVERNMENT
PRINTING OFFICE**
KEEPING AMERICA INFORMED

Order Processing Code:
3465

Easy Secure Internet:
bookstore.gpo.gov

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048-004-02467-5	Cum. Bulletin 1999-3	20.40	
	048-004-02462-4	Cum. Bulletin 2001-2 (Jul-Dec)	24.00	
	048-004-02480-2	Cum. Bulletin 2001-3	71.00	
	048-004-02470-5	Cum. Bulletin 2002-2 (Jul-Dec)	28.80	
	048-004-02486-1	Cum. Bulletin 2002-3	54.00	
	048-004-02483-7	Cum. Bulletin 2004-2 (July-Dec)	54.00	
	048-004-02488-8	Cum. Bulletin 2005-2	56.00	
Total for Publications				

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	\$247	
		Optional - Add \$50 to open Deposit Account		
Total for Subscriptions				
Total for Publications and Subscriptions				

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:
(enter account information at right)

VISA MasterCard Discover/NOVUS American Express

Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (_____) _____

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of \$50 you can establish your Superintendent of Documents Deposit Account.

YES! Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I am enclosing the \$50 initial deposit.



Check method of payment:

- Check payable to Superintendent of Documents
- SOD Deposit Account -
- VISA MasterCard Discover/Novus American Express

(expiration date)

Thank you for your Order!

Authorizing signature

06/06

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

*Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of \$50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, \$300