

Treasury Department Circular No. 230

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IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any matters addressed herein.

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Pedram Ben-Cohen is an Attorney-at-Law and Certified Public Accountant licensed by the State of California who practices in all areas of Tax Law. Mr. Ben-Cohen's experience stems from practicing Tax Law at Latham & Watkins, LLP and Gibson, Dunn & Crutcher, LLP where he represented high net worth individuals, public and private corporations, partnerships, s corporations, and tax-exempt organizations in connection with a broad range of tax-related matters including tax disputes with the Internal Revenue Service and Franchise Tax Board, taxable and tax-free acquisitions and dispositions, joint ventures, entity formation, and estate planning. He also gained tax experience working at Deloitte & Touché, LLP and the Tax Division of the U.S. Attorney's Office.

Mr. Ben-Cohen earned his law degree *cum laude* from Georgetown University Law Center. While at Georgetown, Mr. Ben-Cohen was a member of *The Tax Lawyer*, where he published The Real Estate Exception to the Passive Activity Rules in *Mowafi v. Commissioner* and the New Burden Shifting Statute, 55 *TAX LAW*. 961 (2002). Mr. Ben-Cohen has also published Public Civil Defenders: A Right to Counsel for Indigent Civil Defendants, 10 *GEO. J. ON POVERTY L. & POL'Y*, 1 (2003).

He earned a B.S. degree *cum laude* from the University of Southern California, where he majored in accounting.

Additional articles published by Mr. Ben-Cohen include:

- "Payments by Majority Shareholders to Minority Shareholders to Secure Change in Control: Ordinary Income or Capital Gain?," *Daily Tax Report*, August 17, 2005
- "Consideration of Subject Matter Jurisdiction of District Courts Required When Preparing Cases Where Taxpayers Seek Solely Statutory Interest." *Daily Tax Report*, November 30, 2004

Circular 230 Overview

- “Attorneys and accountants should be the pillars of our system of taxation, not the architects of its circumvention” – Former IRS Commissioner Mark Everson, March 18, 2003.
- “The more we can work with you to help you and your clients get it right, the less time we need to spend dealing with problems after the fact.” – IRS Commissioner Doug Shulman, May 9, 2008.

Circular 230 Overview cont.

- Scope
 - Focus is Circular 230
 - Brief discussion of IRC Section 6694 Preparer Penalties
- Other Ethical rules include:
 - California law, Business and Professions Code
 - AICPA, Statements on Standards for Tax Services
 - IRC Sections 6695 Other Assessable Penalties, 6713 & 7216 Unlawful Disclosures

Section 10.3 Who may practice

- Cir. 230 – rules governing “practice before the IRS” apply to:
 - Attorneys
 - Certified Public Accountants
 - Enrolled Agents
 - Enrolled Actuaries
 - Appraisers
 - Enrolled Retirement Plan Agents

Section 10.2(a)(4) Practice before the IRS

- Presentation regarding all matters before the IRS regarding laws or regulations administered by the IRS
- Return preparation
- Representation of taxpayers
- Providing written advice with respect to any entity, transaction, plan or arrangement having a potential for tax avoidance

Section 10.20 Information Requested by the IRS

- Upon a request by the IRS, a practitioner must promptly:
 - Submit non-privileged records and information to the IRS. See IRC Section 7525 for Tax Practitioner/Client privilege (may not apply to return preparation).
 - Notify IRS of the location of requested records and information in possession of others.
 - Make reasonable inquiries of the client regarding the location of requested records and information in possession of others.
 - Not required to inquire of others or independently verify information provided by the client.

Section 10.21 Knowledge of Clients Error or Omission

- If a practitioner knows a client has made an error or omission from any return or other tax-related document submitted to the IRS, the practitioner must:
 - advise the client of the nature of the error or omission; and
 - advise the client of the potential consequences of the error or omission under the Code or Regulations.
- Be clear in your advice and document

Section 10.22 Diligence as to Accuracy

- Practitioners must exercise due diligence relating to preparation of returns and documents in determining the correctness of representations to the client and the IRS.
- Practitioners are presumed to have exercised reasonable care and due diligence when relying upon the work product of others, unless the practitioner did not use reasonable care in hiring, supervising, and training the other person.
 - In the case of a subordinate employee in a firm, the focus is on training and review. In the case of an independent contractor hired to prepare or review returns, or in the case of a specialist retained to provide advice on a particular tax matter, the focus will be on exercising reasonable care in assessing the person's credentials.

Section 10.22 Diligence as to Accuracy cont.

- Professional responsibility and FBARs.
- During the 2010 tax filing season, 10,000 letters were sent to practitioners with large volumes of specific tax returns where IRS typically sees frequent errors.
- Beginning in late January, IRS Revenue Agents visited (and continue to visit) thousands of the preparers who received these letters to review common errors and to discuss their obligations and responsibilities to prepare accurate tax returns. Meeting will take approximately 3 hours and the agent will not assess preparer penalties (not a compliance audit).

Section 10.23 Prompt Disposition of Pending Matters

- Practitioners may not unreasonably delay the prompt disposition of any matter before the IRS.
- The IRS will generally address “delay” by bypassing the representative’s Power of Attorney and contact the taxpayer directly. When a bypass of the Power of Attorney occurs, the representative is not prohibited from appearing with or providing information on behalf of a taxpayer.
- If a practitioner believes a bypass letter has been unfairly issued, the examiner’s group manager should be contacted and if the issue is not resolved, the Territory Manager and, if necessary, the Area Manager should be contacted. Usually one or more of those parties have approved the letter without hearing the practitioner's position.

Section 10.27 Fees

- No unconscionable fees for matters before IRS.
- No contingent fees unless relating to:
 - IRS examination of an original tax return;
 - IRS challenge to amended tax return or refund claim filed within 120 days of receipt of IRS examination notice;
 - refund claim re assessed interest or penalties;
 - whistleblower claims under IRC Section 7623 (added by Notice 2008-43 and Prop. REG-113289-08 (7/28/09)); or
 - judicial proceeding arising under IRC.
- “Value billing” in connection with research and analysis for aggressive positions taken on an original return that is considerably in excess of normal hourly rates is not permissible even if it is not contingent upon a successful outcome. Definition of contingent fee is very broad. See Section 10.27(c)(1).

Section 10.27 Fees

Example

Practitioner P meets with a prospective Client who would like to get a second opinion on his 2008 tax returns. Client believes he is entitled to a \$650,000 Net Operating Loss for 2008. Client has asked Practitioner P to look into this issue.

As is often times the case, Client is cheap, and does not want to pay Practitioner P for his services. Client has asked Practitioner P to research whether Client has a valid Net Operating Loss for 2008, and if so, prepare and file amended tax returns for prior years, generating a substantial tax refund. Can Practitioner P handle this case on contingency?

Section 10.28 Return of Client Records

- Practitioner must promptly return all records of a client, even if a fee dispute exists
 - unless state law permits retention for fee disputes,
 - but even then, the records must be returned if required to be attached to a tax return
 - must allow client access to review and copy records necessary to comply with their federal tax obligations
 - may retain copies of client records

Section 10.28 Return of Client Records cont.

- “Records of the client” include:
 - records that preexisted the engagement of practitioner
 - records prepared by client or others at any time
 - records prepared by practitioner and presented to client if necessary for client to comply with federal tax obligations
 - does not include returns, schedules, etc. prepared by the practitioner being withheld pending a fee dispute

Section 10.29 Conflicting interests

- Practitioner may not represent a client before the IRS if the representation involves a conflict of interest.
- Conflict of interest exists if:
 - representation is directly adverse to another client; or
 - significant risk that representation will be materially limited by the practitioner's responsibilities to another client, former client or a personal interest.
- Conflicts commonly arise among married couples, family relationships involving business entities, partner/partnership tax issues, and corporation/officer/shareholder issues.

Section 10.29 Conflicting interests cont.

- Notwithstanding a conflict of interest, the practitioner may represent a client if:
 - reasonable belief the practitioner is able to provide competent and diligent representation;
 - representation is not prohibited by law; and
 - written, informed waiver of the conflict by each affected client signed no later than 30 days after the conflict is known by the practitioner.
 - must retain written waiver for at least 36 months
 - once a conflict is known, a practitioner is required to suspend all services (and any existing conversations) until the consent process is completed.

Section 10.30 Solicitation

- Practitioners are prohibited from engaging in any form of solicitation containing claims that are false or misleading.
- Any permitted solicitation must clearly identify the solicitation as such and, if applicable, identify the source of the information used.

Example

Some tax practitioners send mailings offering their services to taxpayers against which federal tax liens have been filed. Such practitioners are required to indicate the source of their information (*i.e.* public records) that generate the communication.

Section 10.33 Best practices

- Best practices are aspirational. A practitioner who fails to comply with best practices will not be subject to discipline. Similarly, the provision relating to steps to ensure that a firm's procedures are consistent with best practices is aspirational. Preamble to TD 9165.
 - Communicate clearly with the client regarding the terms of the engagement.
 - Establish the facts evaluating the reasonableness of any assumptions or representations and arrive at a conclusion supported by the law and the facts.
 - Advise the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties.
 - Tax advisors with responsibility for overseeing a firm's practice should take reasonable steps to ensure that the firm's procedures are consistent with the best practices.

Section 10.34 Standards with respect to tax returns

- A practitioner may not advise a client to take a position unless the position is not frivolous (2002 version defined as “patently improper”). For authority, see Treas. Reg. Section 1.6662-4(d)(3)(iii) of the substantial understatement penalty regs.
- A practitioner may not advise a client to submit a document to the IRS
 - The purpose of which is to impede the administration of the Federal tax laws;
 - That is frivolous; or
 - That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.
- A practitioner must inform a client of penalties that are reasonably likely to apply with respect to a position taken on a tax return, if the practitioner (1) advised the client on the position or (2) signed or prepared the return. Should be done in writing.

Section 10.34 Standards with respect to tax returns **cont.**

- A practitioner must inform the client of any opportunity to avoid penalties by disclosure. Should be done in writing.
- A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client.
- The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact, or incomplete.

Section 10.34 Standards with respect to tax returns **cont.**

Example

Practitioner F prides himself on providing outstanding client service. He visits the house of a new client to obtain tax information and meets Client's wife and four children. Practitioner F is in awe of the large house located in Beverly Hills and the new Ferrari with temporary tags in the driveway.

Practitioner F is surprised when Client provides documents showing only \$50,000 of wages, \$40,000 of mortgage interest, and \$600 of interest and dividends. Client claims to have no other income and tells Practitioner F to "go work your tax magic" because he needs the refund for a cruise next month. What are Practitioner F's obligations under Circular 230?

Section 10.34 Standards with respect to tax returns **cont.**

Example

Practitioner G is preparing Client's tax return. Client sold his principal residence in 2008 for a sizeable gain. Unfortunately, Client fails the test to claim the personal residence exclusion.

Practitioner G has researched the issue thoroughly and concluded Client does not qualify to exclude the gain. Client asks about his chances of getting caught on audit if he excludes the gain anyway. Practitioner G refuses to sign any return that excludes the gain. Client then asks Practitioner to prepare the return both ways – reporting and excluding gain – and Client will decide later which one to file. What are Practitioner G's obligations under Circular 230?

Section 10.35 Covered opinions

- A covered opinion is written advice by a practitioner, that concerns one or more federal tax issues arising from:
 - (1) a transaction that is the same or substantially similar to a transaction that the IRS has determined to be a tax avoidance transaction and identified by published guidance as a listed transaction;
 - (2) any partnership or other entity, investment plan or arrangement, or other plan or arrangement, with a principle purpose of avoidance or evasion of any tax imposed by the Code; or
 - (3) any partnership or other entity, investment plan or arrangement, or other plan or arrangement, with a significant purpose of avoidance or evasion of any tax imposed by the Code,
 - if the written advice is
 - (a) a reliance opinion,
 - (b) a marketed opinion,
 - (c) subject to conditions of confidentiality, or
 - (d) subject to contractual protection.

Section 10.35 Covered opinions cont.

- Principal purpose is defined as a purpose to avoid or evade taxes that exceeds any other purpose (e.g. business purpose). Does not include the purpose of claiming tax benefits in a manner consistent with the statute and Congressional purpose.
- A partnership, entity, plan or arrangement may have a significant purpose of avoidance or evasion even though it does not have the principal purpose of avoidance or evasion.
- Significant purpose is not defined. “Having meaning; having or likely to have influence or effect; deserving to be considered,” Webster’s Third New International Dictionary.
- Is an e-mail to a client advising on whether or not to file an S election a covered opinion? Check the box election?

Section 10.35 Covered opinions cont.

- A “reliance opinion” is written advice that concludes at a confidence level of more likely than not (*i.e.*, greater than 50% likelihood) that one or more significant federal tax issues would be resolved in the taxpayer's favor.
- An exception is available for opinions other than those involving a listed transaction or a transaction with the principal purpose of avoiding or evading taxes. For such other opinions, the definition of reliance opinion does not apply where the practitioner prominently discloses in the opinion that the advice is not intended or written to be used and cannot be used, by the taxpayer, for the purpose of avoiding tax penalties.

Section 10.35 Covered opinions cont.

- A “marketed opinion” is written advice where the practitioner knows or has reason to know that the advice will be used by a person other than the practitioner in promoting, marketing, or recommending a partnership or other entity, or an investment plan or arrangement, to another taxpayer.
- An exception is available for opinions other than those involving a listed transaction or a transaction with the principle purpose of avoiding or evading taxes. For such other opinions, the definition of marketed opinion does not apply where the practitioner prominently discloses in the opinion that: (1) the advice was not intended or written to be used and cannot be used, by the taxpayer, for the purpose of avoiding tax penalties; (2) the advice was written to support the marketing of the transaction or matter addressed in the advice; and (3) the taxpayer should seek advice from an independent advisor.

Section 10.35 Covered opinions cont.

- An opinion is subject to “conditions of confidentiality” if the practitioner imposes on a recipient of the advice a limitation on disclosure of the tax treatment or structure of the transaction and such limitation protects the confidentiality of the practitioner's tax strategies.

- An opinion is subject to “contractual protection” if the taxpayer has the right to a full or partial refund of the practitioner's fees if all or a part of the intended tax consequences from the matters addressed in the opinion are not sustained, or if the practitioner's fees are contingent on the taxpayer's realization of tax benefits from the transaction.

Section 10.35 Covered cont.

- For an item to be “prominently disclosed” in written advice:
 - the disclosure must be readily apparent to a reader of the written advice.
 - whether an item is readily apparent will depend on the facts and circumstances surrounding the written advice including, but not limited to, the sophistication of the taxpayer and the length of the written advice.
 - at a minimum, to be prominently disclosed an item must be set forth in a separate section (and not in a footnote) in a typeface that is the same size or larger than the typeface of any discussion of the facts or law in the written advice.
 - practitioners should consider the meaning of prominently disclosed when sending e-mails to clients containing any type of tax advice.

Section 10.35 Covered opinions cont.

- Circular 230 requires the practitioner, with respect to a covered opinion, to:
 - (1) determine the facts;
 - (2) relate the facts to the law;
 - (3) evaluate the significant federal tax issues and reach a conclusion with respect to each such issue; and
 - (4) reach an overall conclusion regarding the tax treatment of the transaction.

Section 10.35 Covered opinions cont.

- **Determine the Facts**

- Circular 230 10.35(c)(1) requires a practitioner to use reasonable efforts to identify and ascertain the facts, to determine which facts are relevant, and to identify and consider all of the relevant facts in the opinion.

- The practitioner cannot base the opinion on any unreasonable factual assumptions. A separate section of the opinion must identify all factual assumptions relied upon by the practitioner.

- **Relating the Law to the Facts**

- The practitioner must relate the applicable law, including potentially applicable judicial doctrines, to the relevant facts in the opinion.

Section 10.35 Covered opinions cont.

- Considering All Significant Federal Tax Issues

- The general rule is that the opinion should consider all significant federal tax issues, unless the opinion is a limited scope opinion (discussed later).

- The practitioner must conclude that the taxpayer will prevail on the merits with respect to each significant federal tax issue considered in the opinion, at a confidence level of at least more likely than not, and describe the reasons for the conclusions, including the facts and analysis supporting the conclusions.

- Providing an Overall Conclusion

- The opinion must provide the practitioner's overall conclusion as to the likelihood that the federal tax treatment of the transaction is the proper treatment and the reasons for that conclusion. If the practitioner is unable to reach an overall conclusion, the opinion must state that fact and describe the reasons for the practitioner's inability to reach a conclusion.

Section 10.35 Covered opinions cont.

- **Limited Scope Opinions**

- If the taxpayer and the practitioner agree, the practitioner may provide an opinion that considers less than all of the significant federal tax issues if the written advice does not concern a listed transaction or a transaction with the principal purpose of avoiding or evading taxes, and the opinion is not a marketed opinion.

- Except for the requirement to evaluate all significant federal tax issues, a limited scope opinion must satisfy all of the requirements for a covered opinion discussed above and must include appropriate disclosures (discussed later).

- As a result of limiting the scope of the opinion, the taxpayer's potential reliance on the opinion for purposes of avoiding penalties that may be imposed will be limited to the federal tax issues addressed in the opinion.

Section 10.35 Covered opinions cont.

- **Competence Requirements**

- Circular 230 10.35(d)(1) requires the practitioner to be knowledgeable in all of the aspects of federal tax law relevant to the practitioner's opinion, unless the practitioner relies on the opinion of another practitioner with respect to one or more significant federal tax issues.

- In cases where the practitioner relies on the opinion of another practitioner, the relying practitioner's opinion must identify the other opinion and set forth the conclusions reached in the other opinion.

- Ultimately the practitioner must be satisfied that the combined analysis of the opinions, as a whole, satisfy the competence requirement of Circ. 230 10.35(d).

Section 10.35 Covered opinions cont.

- Disclosure Requirements

- *Relationship between promoter and practitioner.* Disclose any compensation arrangement or referral agreement between the promoter and the practitioner.

- *Marketed Opinions.* Disclose that the practitioner drafted the opinion to support the promotion or marketing of the transaction or matter addressed in the opinion and that the taxpayer should seek advice from an independent tax advisor based on the taxpayer's particular circumstances.

Section 10.35 Covered opinions cont.

- Disclosure Requirements

- *Limited Scope Opinion*

- Prominently disclose that the opinion is limited to the federal tax issues addressed in the opinion.
 - Disclose that other issues may exist that could affect the federal tax treatment of the transaction and the opinion does not provide a conclusion with respect to any other issues.
 - Opinion was not written and cannot be used by the taxpayer, to avoid penalties with respect to any significant federal tax issues outside the limited scope of the opinion.

Section 10.35 Covered opinions cont.

- Disclosure Requirements

- *Opinions Failing to Reach a More Likely Than Not Conclusion*

- must disclose that: (1) the opinion does not reach such confidence level with respect to those issues; and (2) with respect to those issues, the opinion was not written and cannot be used by the taxpayer, for the purpose of avoiding penalties.

- *Advice Contrary to Disclosures*

- In the case of any disclosure required under Circ. 230 10.35(e), the practitioner may not provide advice to any person that is contrary to or inconsistent with the required disclosure.

Section 10.35 Covered opinions cont.

- **Oversight Requirements**

– Any practitioner who has principal authority for overseeing a firm's practice of providing advice concerning federal tax issues must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for the purposes of complying with the covered opinion requirements of Circ. 230 10.35. This is not aspirational.

Section 10.37 Requirements for other written advice

- Practitioner may not give written or electronic advice based on unreasonable legal or factual assumptions or representations.
- May not give advice that takes into account:
 - the possibility of an audit;
 - whether the issue will be raised on audit; or
 - whether, if raised on audit, the issue would be resolved through settlement.
- While a practitioner may be able to “opt-out” of the covered opinion standards for certain types of opinions, the practitioner still must comply with Section 10.37. NEVER, EVER, include the items listed above in an e-mail or any other type of written communication.

Section 10.50 OPR Sanctions

- Censure
- Suspension, or
- Disbarment from practice before the IRS
- OPR may also impose a monetary penalty not to exceed the gross income derived from the conduct giving rise to the penalty.

Section 10.51 Incompetence and Disreputable Conduct

- Giving any false or misleading information to IRS.
- Use of misleading information with the intent to deceive a client.
- Willful failure to file a tax return or evading any assessment of tax.
- Willfully assisting others in the violation of any federal tax law.
- Disbarment or suspension as an attorney, CPA, or actuary by any state licensing authority.

Section 10.51 Incompetence and Disreputable Conduct **cont.**

- Knowingly aiding a person to practice before the IRS who is ineligible, suspended or disbarred.
- Contemptuous conduct in connection with IRS practice (e.g. using abusive language, making false accusations or statement).
- Giving false opinions based on knowing misstatements of fact or law.
- Willful failure to sign a tax return prepared by the practitioner.
- Unauthorized disclosure or use of tax return information.

Section 10.53 Report of Suspected Violations

- If an IRS employee has reason to believe (not a high threshold) that a practitioner has violated Circular 230, the employee has an affirmative obligation to report the suspected violation to the OPR. Section 10.53(a).
- IRM 20.1.6.2.1, Referral to the Office of Professional Responsibility
 - When the following penalties are asserted against a practitioner, an information referral to the OPR is mandatory:
 1. IRC section 6694(a), Understatements Due to Unrealistic Positions, and IRC section 6694(b), Willful or Reckless Conduct, penalties when closed by examiners, sustained in Appeals, or closed without Appeal contact.
 2. IRC sections 6695(f), Negotiation of Check.
 3. IRC section 6700, Promoting Abusive Tax Shelters, and IRC section 6701, Aiding and Abetting Understatement of Tax, penalties when proposed.
- Any other person can file a report with the OPR.

Section 10.8 Report of Final Sanctions to State Licensing Authorities

- Upon issuance of final order of censure, suspension or disbarment, the Director of OPR may give notice of such action to:
 - Representatives of the IRS
 - Representatives of other Federal agencies
 - The appropriate State licensing authorities

Understatement of Taxpayer's Liability by Tax Return Preparer – IRC Section 6694

- The IRS may impose a penalty against a tax return preparer under IRC Section 6694 if any part of an understatement on a tax return or refund claim was due to an “unreasonable” position and the return preparer knew or should have known of the position.
 - A position that was “adequately disclosed” is considered to be unreasonable unless there was a “reasonable basis” for the position.
 - A position that is not disclosed on the return is considered to be unreasonable unless there was “substantial authority” for the position.
 - The penalty is equal to the greater of \$1,000 or 50% of the income derived (or to be derived) by the preparer with respect to the return or claim.
 - No penalty will be imposed if the preparer can establish reasonable cause for the understatement and that the preparer acted in good faith.
 - The penalty increases to the greater of \$5,000 or 50% of the income derived (or to be derived) by the preparer with respect to the return or claim if the understatement was due to willful conduct or a reckless or intentional disregard of rules or regulations.

IRC Section 6694, 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. E reports the deduction on the return and signs the return as the preparer. E is subject to a 6694 penalty for the resulting understatement. Treas. Reg. Section 1.6694-1(e)(3), Example 1.

Example 2

While preparing the 2008 tax return for an individual taxpayer, Preparer F realizes that the taxpayer did not provide a Form 1099 for a bank account that produced significant taxable income in 2008. When F inquired about any other income, the taxpayer furnished the Form 1099 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 6694. Treas. Reg. Section 1.6694-1(e)(3), Example 2.

IRC Section 6694, Examples, Cont.

Example 3

Accountant X is hired by Taxpayer T to prepare his income tax return. X does not reasonably believe that a particular return position would meet the more likely than not standard although there is substantial authority for the position. X prepares the return without disclosing the position, but advises T of the penalty standards applicable to taxpayers, and documents this advice in his files. T signs and files the return without disclosing the position. The IRS later challenges the position, resulting in an understatement of liability. However, X is not subject to a 6694 penalty. Treas. Reg. Section 1.6694-2(c)(3)(v), Example 1.

Other Duties of a Preparer and Related Penalties

- Duty to sign return. Treas. Reg. Section 1.6695-1(b).
- Furnish preparer tax identification number. IRC Section 6109(a)(4).
- Providing copy of return to taxpayer. IRC Section 6107(a).
- Retain copy of returns for at least 3 years. IRC Section 6107(b).
- Any person who employs a preparer must retain a record of the name, taxpayer identification number, and principal place of work of each such preparer. IRC Section 6060.
- Cannot endorse or negotiate taxpayer's check. IRC Section 6695(f).