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Tax Return Preparer Penalties Under
Sections 6694 and 6695; Final Rule**

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 IRB 282) on December 31, 2007, to provide interim guidance under the 2007 Act. Additional guidance was simultaneously provided in Notice 2008-12 (2008-3 IRB 280) with respect to the implementation of the tax return preparer signature requirement of section 6695(b), and in Notice 2008-11 (2008-3 IRB 279), which clarified the earlier transition relief provided in Notice 2007-54 (2007-27 IRB 12 (July 2, 2007)). Notice 2008-46 (2008-18 IRB 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) 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 CB 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 supervisory 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 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 authorities 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 IRB 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, contemporaneous 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 Government Purpose Tax-Exempt Bond Issues, Form 8038-GC, Consolidated Information Return for Small Tax-Exempt Government Bond Issues, 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 and Penalty in Lieu of Arbitrage Rebate, and Form 8038-R, Request for Recovery of Overpayment 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, Public Law 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 IRB 12).
- Notice 2008-11 (2008-3 IRB 279).
- Notice 2008-12 (2008-3 IRB 280).
- Notice 2008-13 (2008-3 IRB 282).
- Notice 2008-46 (2008-18 IRB 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).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Generation-skipping transfer taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad Retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 41

Excise taxes, Motor vehicles, Reporting and recordkeeping requirements.

26 CFR Part 44

Excise taxes, Gambling, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 55

Excise taxes, Investments, Reporting and recordkeeping requirements.

26 CFR Part 56

Excise taxes, Lobbying, Nonprofit organizations, Reporting and recordkeeping requirements.

26 CFR Part 156

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 157

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

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 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 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 Filers 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 refund 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 paragraphs (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 paragraphs (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 nonsigning 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 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 against K to the understatement. 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 $.5 \times (100/2,000) \times \$75,000 = \$1,875$. 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 (d) 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(d)(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 (c)(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 attorney 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(c)(2) and is adequately disclosed in accordance with §§ 1.6694-2(c)(3)(i)(A) or (C) or 1.6694-2(c)(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(c)(3)(i)(A) or (C) or 1.6694-2(c)(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 expenses 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 Revenue 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 to 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 collected 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 failure 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 employer 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 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(c):

(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 20.6109-2 also issued under 26 U.S.C. 6109(a). * * *
 Section 20.6695-1 also issued under 26 U.S.C. 6695(b). * * *
 Section 20.6695-2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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 25.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 25.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 25.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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, 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 26.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 26.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 26.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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). * * *

Section 31.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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 40.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 40.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 40.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 excise tax 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 excise tax 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 excise tax 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 applicable to preparers of returns or claims for refund of excise tax 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 excise tax 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 return or claim for refund of excise tax 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 return or claim for refund of excise tax 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 return or claim for refund of excise tax 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 Code, failure to sign the return under section 6695(b) of the Code, failure to furnish an identification number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e), and negotiation of a check under section 6695(f), 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 excise tax 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). * * *
Section 41.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 record keeping 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 shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a), failure to sign a return under section 6695(b), failure to furnish an identification number under section 6695(c), failure to retain a copy

or list under section 6695(d), failure to file a correct information return under section 6695(e) of the Code, and negotiation of a check under section 6695(f), 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 44.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 44.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 44.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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 shall be subject to penalties for failure to furnish a copy to the taxpayer under section 6695(a), failure to sign the return under section 6695(b), failure to furnish an identification number under section 6695(c), failure to retain a copy or list under section 6695(d), failure to file a correct information return under section 6695(e), and negotiation of a check under section 6695(f), 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 53.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 53.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 53.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 54.6109-2 also issued under 26 U.S.C. 6109(a). * * *
Section 54.6695-1 also issued under 26 U.S.C. 6695(b). * * *
Section 54.6695-2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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 56.6694-3 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 55.6109-2 also issued under 26 U.S.C. 6109(a). * * *
Section 55.6695-1 also issued under 26 U.S.C. 6695(b). * * *
Section 55.6695-2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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 56.6109-2 also issued under 26 U.S.C. 6109(a). * * *
Section 56.6695-1 also issued under 26 U.S.C. 6695(b). * * *
Section 56.6695-2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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 156.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 156.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 156.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 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. 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 157.6109–2 also issued under 26 U.S.C. 6109(a). * * *
Section 157.6695–1 also issued under 26 U.S.C. 6695(b). * * *
Section 157.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **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 under subtitle A.

(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 an 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 incompetent, 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

CFR part or section where identified and described	Current OMB control No.
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
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Linda M. Kroening,
Acting Deputy Commissioner for Services and Enforcement.

Approved: December 10, 2008.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-29750 Filed 12-15-08; 4:15 pm]

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