

regulation is adequate if the position is disclosed in the manner provided in paragraph (e)(1) of this section. In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (e)(2) (i) or (ii) of this section, whichever is applicable.

(i) *Advice to taxpayers.* In the case of a nonsigning preparer who provides advice to the taxpayer with respect to a position that is contrary to a rule or regulation, disclosure of that position is adequate if the advice includes a statement that—

(A) The position is contrary to a specified rule or regulation and, therefore, is subject to a penalty described in section 6662(c) unless adequately disclosed in the manner provided in § 1.6662-3(c)(2) (which permits disclosure on a properly completed and filed Form 8275 or 8275-R, as appropriate, and which requires adequate identification of any rule or regulation being challenged); and

(B) In the case of a position contrary to a regulation, the position must represent a good faith challenge to the validity of the regulation.

If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the taxpayer.

(ii) *Advice to another preparer.* If a nonsigning preparer provides advice to another preparer with respect to a position that is contrary to a rule or regulation, disclosure of that position is considered adequate if the advice includes a statement that disclosure under section 6694(b) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral.

The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the other preparer.

(f) *Rules or regulations.* The term “rules or regulations” includes the provisions of the Internal Revenue 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.

(g) *Section 6694(b) penalty reduced by section 6694(a) penalty.* The amount of any penalty to which a preparer may be subject under section 6694(b) for a return or claim for refund is \$1,000 reduced by any amount assessed and collected against the preparer under section 6694(a) for the same return or claim.

(h) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(b), the Government bears the burden of proof on the issue of whether the preparer willfully attempted to understate the liability for tax. See section 7427. The preparer bears the burden of proof on such other issues as whether—

(1) The preparer recklessly or intentionally disregarded a rule or regulation;

(2) A position contrary to a regulation represents a good faith challenge to the validity of the regulation; and

(3) Disclosure was adequately made in accordance with paragraph (e) of this section.

[T.D. 8382, 56 FR 67518, Dec. 31, 1991]

**§ 1.6694-4 Extension of period of collection where 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 will investigate the preparation by a preparer of a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and will send a report of the

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examination to the preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which there was not a realistic possibility of being sustained on its merits under section 6694(a); or

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

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

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

(3) 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 preparer, the 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.

(4) If the preparer pays an amount and files a claim for refund under paragraph (a)(3)(ii) of this section, the Internal Revenue Service 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 preparer's claim for refund is denied; or

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

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

However, the Internal Revenue Service 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 Internal Revenue Service and the 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 Internal Revenue Service in contravention of this paragraph (a)(4) may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty.* If, within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(3)(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.

The preparer fails to begin a proceeding for refund in the appropriate United States district court, the Internal Revenue Service may proceed with collection of the amount of the penalty not paid under paragraph (a)(3)(ii) of this section.

(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 Internal Revenue Service, under paragraph (a)(4) of this section, may not collect the unpaid

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

(d) *Effective date.* The provisions of this section are effective as of December 19, 1989.

[T.D. 8382, 56 FR 67519, Dec. 31, 1991, T.D. 8382, 57 FR 6061, Feb. 19, 1992]

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

(a) *Failure to furnish copy to taxpayer.*

(1) A person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and who fails to satisfy the requirements imposed by section 6107(a) and § 1.6107-1 (a) and (c) 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. Thus, no penalty may be imposed under section 6695(a) and this paragraph (a)(1) upon a person who is an income tax return preparer solely by reason of—

(i) Section 301.7701-15 (a)(2) and (b) on account of having given advice on specific issues of law; or

(ii) Section 301.7701-15(b)(3) on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

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

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

(ii) Who, in order faithfully to carry out his official duties, has so arranged his affairs that he has less than full knowledge of the property which he holds or of the debts for which he is responsible, if information is deleted

from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.* (1) Unless the Secretary has prescribed another method of signing pursuant to § 301.6061-1(b) of this chapter on or after July 21, 1995, an individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code (Code) or claim for refund of tax under subtitle A of the Code shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. Except as provided in paragraphs (b)(4) (iii) and (iv) of this section, an individual preparer may not satisfy this requirement by use of a facsimile signature stamp or signed gummed label. If the preparer is unavailable for signature, another preparer shall review the entire preparation of the return or claim for refund, and then shall manually sign the return or claim for refund.

(2) If more than one income tax return preparer is involved in the preparation of the return or claim for refund, the individual preparer who has the primary responsibility as between or among the preparers for the overall substantive accuracy of the preparation of such return or claim for refund shall be considered to be the income tax return preparer for purposes of this paragraph.

(3) The application of paragraphs (b) (1) and (2) of this section is illustrated by the following examples:

*Example (1).* X law firm employs Y, a lawyer, to prepare for compensation returns and claims for refund of taxes. X is employed by T, a taxpayer, to prepare his 1977 Federal tax return. X assigns Y to prepare T's return. Y obtains the information necessary for completing the return from T and makes determinations with respect to the proper application of the tax laws to such information in order to determine T's tax liability. Y then forwards such information to C, a computer tax service which performs the mathematical computations and prints the return form by means of computers. C then sends the completed return to Y who reviews the accuracy of the return. Y is the individual preparer who is primarily responsible for the