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Proposed Tax Return Preparer Penalty Regulations: A Comparison with Existing Guidance

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Proposed Tax Return Preparer Penalty Regulations: A Comparison with Existing Guidance


Editors’ Synopsis: This article considers newly issued proposed regulations under section 6694 of the Internal Revenue Code, which imposes tax return preparer penalties. The article discusses new rules and differences from existing authority concerning such matters as multiple preparers of a return and non-income tax returns. The article also points out uncertainties which could be addressed in the final regulations.

In May 2007, Congress amended section 6694 of the Code, strengthening the preparer penalties it imposes in three ways.

First, it expanded the section so that it now applies to preparers of non-income-tax returns.

Second, it heightened the standards that preparers must satisfy in order to avoid the penalty. As a general rule, as amended, the section requires that a preparer reasonably conclude, in good faith, that it is more likely than not that the position will be sustained on the merits. Prior to the amendment, the preparer was only required to conclude that the position had a realistic possibility of succeeding.

Under the section, as amended, as well as prior to the amendment, an exception is made where the position is disclosed. Under the amendment, there must be a reasonable basis for the position—apparently, a 10% probability of success—in order for the exception to be available. Prior to the amendment, the exception could be invoked as long as the position was not a frivolous one.

Third, the amendment increases the amount of the penalty.

In January 2008, the Internal Revenue Service (“Service”) issued Notice 2008-13, which provides interim guidance concerning the amendment. As the Notice indicates, it will remain effective until further guidance is issued. On June 17, 2008, the Treasury Department, along with the Service, issued proposed regulations that, once finalized, will replace existing regulations and the Notice. Until they are made final, however, the guidance in the Notice will remain in effect.

While the proposed regulations follow the general pattern established in the Notice, they would make some important changes. This article considers the most important of these changes.

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1 This article shall make frequent references to section 6694 of the Code. In all cases, this shall be deemed to refer to section 6694 of the Internal Revenue Code of 1986 as amended.
2 The proposed regulations define the term “reasonable basis” by cross-referencing the definition in Treas. Reg. § 1.6662-3. See Prop. Treas. Reg. § 1.6694-2(c)(1). And, according to the I.R.S., the term “reasonable basis”, when used in Treas. Reg. § 1.6662-3, requires a ten percent probability of success. See I.R.S. FACT SHEET NO. 2008-19, AVOIDING PENALTIES AND THE TAX GAP (March 2008). Interestingly, the I.R.S. contemplates that this test can only be satisfied if there is “some authority supporting the position.” See id. This should be contrasted with Example 1 in Prop. Treas. Reg. § 1.6694-2(b)(4), which will be discussed in text, where the conclusion is reached that the more-likely-than-not standard can be satisfied on the basis of a well-reasoned construction of the statute, even if there is no other supporting authority.
5 The Notice provides that, until the regulations are revised, it will remain effective. In the proposed regulations, the preamble indicates that it will not become effective until the regulations are made final and, in no event, prior to December 31, 2008. Note that the proposed regulations do not invite reliance. Thus, until they become final, they are not binding and, indeed, have no precedential value. See, e.g., Boeing v. U.S., 537 U.S. 437, 453 n.13 (2003); Square D Co. v. Comm’r, 121 T.C. 168, 205 (2003); Garvey v. U.S., 726 F.2d 1569, 1571-72 (Fed. Cir. 1984); Yocum v. U.S., 66 Fed.Cl. 579 (Cl. Ct. 2005). But see Elkins v. Comm’r, 81 T.C. 669 (1983) (finding an abuse of discretion where the final regulations changed the meaning of the term used in the proposed regulations and the taxpayer had relied on the proposed regulations). Nevertheless, in some cases, the Internal Revenue Service has, when final regulations have been adopted, stated that taxpayers could rely on any reasonable interpretation of the proposed regulations before the final regulations became effective. See, e.g., T.D. 8395, 1992-16 I.R.B. 5.
DIFFERENT PREPARERS CAN BE RESPONSIBLE FOR DIFFERENT POSITIONS ON THE RETURN

In the most important of these changes, the proposed regulations adopt the AICPA recommendation that a single return can have multiple preparers within the same firm. Under existing regulations, a person in the firm is responsible for all of the positions taken on the return. In contrast, under the proposed regulations, each preparer giving advice about the return can be responsible for the section 6694 penalty for the position about which he or she gave advice. In other words, the signing preparer and a non-signing adviser in the same firm are both potentially subject to the preparer penalty. For example, assume A signs the return but relies on a schedule prepared by co-employee B, who is primarily responsible for the schedule-related position. Only B would be responsible for the position in terms of the penalty if it results in an understatement of tax. A, as the signing preparer, would remain responsible for the other positions taken on the return.

The same approach does not, however, apply where more than one firm is involved. If, in this example, A and B were employed by different firms, they could both be treated as responsible preparers with respect to the position about which B gave advice: A, as the signer, and B, as a non-signing adviser, if the advice given by B constitutes the preparation of a substantial portion of the return. Thus, both could be subject to penalty in connection with the same position. Nonetheless, A would be permitted to defend against the imposition of the penalty by establishing reliance on B’s advice—an expanded concept under the proposed regulations.

1 See Treas. Reg. § 1.6694-1(b)(1).
2 Under existing regulations, as a corollary to the rule that there can only be one preparer within a firm, a preparer may not avoid responsibility for the penalty by establishing reliance on another preparer or adviser within the same firm. See Treas. Reg. § 1.6694-2(d)(5). The Notice implicitly began to deviate from this approach. In Example 6 of the Notice, a signing preparer relied on a schedule prepared by another person in the same firm. The schedule did not appear to be incorrect or incomplete. Indicating that the signing preparer was not required to audit or verify independently the information contained in the schedule, the Example concludes that the signing preparer would not be subject to penalty. Thus, the Notice tacitly contemplated what the proposed regulations make explicit: that each preparer within a firm should be responsible for the position about which he or she gave advice.
3 See Prop. Treas. Reg. § 1.6694-1(b).
4 The proposed regulations are not entirely clear as to whether the non-signing adviser who is within the same firm as the signing preparer should be viewed as a preparer if the advice could not have a substantial impact on the taxpayer’s liability. Prop. Treas. Reg. § 301.7701-15(b)(2) defines a non-signing preparer as one who “who prepares all or a substantial portion of a return.” This would suggest that if a person gives advice about an insubstantial portion of the return, he or she would not be deemed a preparer. However, Prop. Treas. Treas. Reg. § 1.6694-1(b), in establishing the concept that there may be multiple preparers within the same firm, appears to contemplate that a person giving advice to a co-employee who signs the return is a preparer without regard to the substantiality of the position. Even though Prop. Treas. Reg. § 1.6694-1(b) cross-references the definition of return preparer in Prop. Treas. Reg. § 301.7701-15, it would seem that an adviser giving advice to a co-employee should be treated as a preparer without regard to the substantial-portions rule. For, under Prop. Treas. Reg. § 1.6694-1(b), the signing preparer is not responsible for the penalty in these circumstances. As a policy matter, it does not seem appropriate to treat all positions not constituting a substantial portion of the return as immune from the preparer penalty simply because the signer received advice from a co-employee. On the other hand, if the position is insubstantial, the prospect of such immunity is not terribly alarming. Indeed, it is arguable that even the signing preparer should not be liable for the penalty if the error is insubstantial. But note that, in Prop. Treas. Reg. § 1.6694-2, the materiality of the error is only one factor to consider in determining if there was reasonable cause and good faith, thus implying an intent to enforce the penalty in some cases even though it does not have a significant impact on the taxpayer’s liability.
6 Unlike the Notice, the proposed regulations provide that a preparer may rely on a prior return prepared by someone else. See Prop. Treas. Reg. § 1.6694-1(e)(2). For example, when preparing an estate tax return, the preparer may rely on prior gift tax returns in computing the amount of adjusted taxable gifts without independently verifying the accuracy of those returns after confirming that there was no adjustment through audit or otherwise. See id. However, the preparer may not ignore the implications of information furnished to the preparer or actually known by the preparer. And if the furnished information appears to be incorrect or incomplete, the preparer must make further inquiry. See id.

The Notice indicates that Treas. Reg. 1.6694-1(e) will continue to govern the kind of taxpayer-supplied information that preparers may utilize in preparing the return. In the example contained in this regulation, the conclusion is reached that a preparer may, in general, rely on the information supplied by the taxpayer without examining the underlying documentation. Surprisingly, the proposed regulations fail to carry over this example. While the preamble does not reveal any intent to change the current approach, the only relevant example in the proposed regulations (Example 1 in Prop. Reg. 1.6694-1(e)(3)) deals with a case where the preparer not only failed to inquire about the existence of a supporting appraisal but also failed to comply with a requirement in the Code that a valuation-related form be attached to the return. This example’s failure to indicate that, absent the special requirement in the Code, the preparer would not have had a duty to examine the supporting documentation—along with the failure to carry over the example from the existing regulations—creates some uncertainty. It would be helpful if the final regulations carried over the existing example. This would confirm that the preparer may accept the client’s representations without having to examine the underlying documents. It would, moreover, confirm the notion in the current example that where the Code or a regulation requires the taxpayer to maintain or possess a particular document, the preparer need only ask if the taxpayer has satisfied the requirement.
While in theory both A and B would be viewed as preparers, only B would be subject to the penalty as a practical matter if A could establish the necessary elements of reliance. In short, the net effect of treating both as preparers while allowing A to defeat the penalty by showing reliance on B is to force A to establish the elements of reliance—whereas A would not have to make such a showing were they part of the same firm.

Surprisingly, the proposed regulations appear to contemplate the possibility that no preparer—neither the signer nor any adviser—would be responsible for the penalty in connection with certain positions. To illustrate, assume that A, the signer, and B, a non-signing adviser, are employed by different firms. In this two-firm context, a non-signing adviser can only be responsible for the penalty if he or she knew or had to reason to know of the position and it constitutes a substantial part of the return. If, in this example, the position does not constitute a substantial part of the return, B could not be responsible for the penalty. At the same time, A could avoid the penalty by showing reliance on B’s advice.

While the proposed regulations only tacitly endorse this no-penalty position in the context of these posited facts, they do explicitly accept this outcome in another context. In Prop. Treas. Reg. § 1.6694-1(f), Example 3, the signing preparer relied on advice given by a co-employee. Because the co-employee gave the advice before the transaction was consummated and because a person giving such pretransaction advice is not viewed as a return preparer and is therefore not subject to the penalty, no penalty could be imposed on the co-employee. Nor, the Example concludes, would the signing preparer be subject to penalty in connection with this position assuming reliance on the co-employee is established. Thus, as suggested, this Example explicitly accepts the notion that there are contexts in which no preparer can be penalized for the position.

DIFFERENT TREATMENT FOR PREPARERS OF NON-INCOME-TAX RETURNS

In another important change from the Notice, the proposed regulations create a new exception for non-income-tax returns, under which the preparer may qualify for the reasonable basis standard even though there is no substantial authority and no disclosure form attached to the return. Under the Notice, absent substantial authority in a case not involving a tax shelter, the preparer had only one choice: attach the necessary disclosure to the return.13 Giving the client advice about the potential for taxpayer penalties under section 6662 was not sufficient. The penalty-disclosure approach only protected the preparer from penalty if there was substantial authority for the position.14 As a result, while the Notice was designed to ameliorate conflicts between preparer and client, it caused a misalignment of interests in this context.

To illustrate, assume that, in preparing an estate tax return, the preparer determined that a position was supported by a reasonable basis but lacked substantial authority. If the preparer advised the client of his or her conclusions, taxpayer penalties under section 6662 could not apply. This is because a reasonable-basis opinion should enable a taxpayer to defeat the negligence penalty.13 Thus, the taxpayer would have no incentive to make disclosure on the return. After all, unlike an income tax return, where the substantial-understatement penalty can be avoided by making disclosure, this penalty is not imposed in the estate tax context and there would be, therefore, no value to the taxpayer in making the disclosure. Indeed, a client might well prefer not to make disclosure in order to reduce the risk of audit. But under the Notice, the preparer would be subject to the section 6694 penalty in these circumstances if the disclosure were not attached to the return (as delivered to the client). Hence, a conflict under the Notice would arise: it would be in the preparer’s interest to attach the disclosure form to the return in order to avoid the penalty by giving the client advice about taxpayer penalties (provided there is a reasonable basis for the position). Compare Prop. Treas. Reg. 1.6694-2(c)(3) with section G of the Notice (both permitting the preparer to avoid the penalty by giving penalty advice but requiring, in certain contexts, different kinds of advice). If a preparer penalty is assessed or proposed, it would seem that the preparer would be permitted to defend by establishing that the penalty advice had been given. The fact that the advice was subject to privilege should not prevent the preparer from making this defense. See, e.g., RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 83 (2000)(permitting a lawyer to disclose privileged information in order to defend against a charge of wrongdoing in the course of the representation).

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avoid having to comply with the "more likely than not" standard and instead use the lower, reasonable basis standard—with the preparer, perhaps, advising the taxpayer about the opportunity for the taxpayer to remove the disclosure form before filing the return—but it might well be in the client's interest not to make the disclosure.

Reflecting a concern about this conflict, the proposed regulations create an exception for non-income tax returns. They permit the preparer of such a return to qualify for the lower standard if certain advice about taxpayer penalties is given. In creating this exception, they eliminate the conflict by realigning the client and the preparer's interests: the failure to attach the disclosure to the return adversely affects neither one of them. Although this discrimination between preparers of income and non-income tax returns is clearly contrary to the statute—which sets the same standards for preparers of all returns—it is a welcome change given the preparer-client conflicts that would otherwise occur.

Note, however, that although the proposed regulations take this preparer-friendly approach, they also make unavailable an exception that preparers of income tax returns can continue to enjoy. Whereas the preparer of an income tax return can avoid penalties if there is a reasonable basis for the position by attaching the disclosure form to the return, even if the taxpayer removes it before filing the return, the preparer of a non-income tax return can only qualify for this lower standard through disclosure if, in fact, the return is filed with the disclosure attached. While, at first blush, it might seem that this creates a significant disadvantage for the non-income tax return preparer, it does not. As indicated, unlike the preparer of an income tax return, the preparer of a non-income tax return can qualify for the reasonable-basis standard simply by giving the taxpayer penalty advice.

TAX SHELTERS

Another change that the proposed regulations make involves tax shelters. Under the Notice, in the case of a tax shelter, the preparer need only give the client advice about taxpayer penalties in order to avoid preparer penalties. Under the proposed regulations, in contrast, absent disclosure, preparer penalties can only be avoided in the case of a tax shelter via the reasonable basis standard if the preparer advises the client: (1) that, at a minimum, there must be substantial authority supporting the position in order to avoid taxpayer penalties; (2) that the client must reasonably believe that the position taken on the return is more than not correct in order to avoid the taxpayer penalties under sections 6662(d) and 6662A; and (3) that disclosure of the position on the return is not sufficient to defeat taxpayer penalties. It is somewhat surprising that the proposed regulations impose these additional requirements. After all, there are no regulations currently in place under either section 6662 or section 6662A that require a taxpayer using a tax shelter to meet such stringent requirements in order to avoid penalties. Thus, unless such regulations are adopted, the proposed regulations require a preparer to give penalty advice to the client that may not be accurate.

Penalty Advice: No Boilerplate

In terms of the method by which penalty advice is to be given to clients, the proposed regulations take aim at recommendations made in the wake of the Notice's issuance. Some (including the authors of this article) had suggested that the advice the Notice required could be included in the engagement letter, thus preventing the preparer from inadvertently failing to comply with the penalty-advice requirements in the Notice during the engagement. The proposed regulations, however, provide that a general disclaimer of this type is not sufficient. Nonetheless, they do permit the preparer to include the penalty advice relating to all of the positions in question in one document or to instead treat each such position in a separate document. The no-general-disclaimer rule is presumably driven by a concern that the penalty advice might not be given serious consideration by the client unless it is provided in the context of a discussion of the particular position.

Critical Examples Revisited

The proposed regulations eliminate a controversial example contained in the Notice. In Example 10, the

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16 The Notice requires advice about the penalty standards applicable to the taxpayer and the difference, if any, between these standards and the standards applicable to the preparer under section 6694.

17 This section imposes a penalty on the substantial understatement of income tax.

18 This section imposes a penalty on reportable and listed transactions.

19 Under current regulations, heightened standards are imposed on corporate taxpayers investing in tax shelters. See Treas. Reg. § 1.6664-4(f). No similar regulation applies in the case of an individual. And while penalties imposed on individuals under section 6662A do trigger heightened standards, see section 6664(d), this section does not appear to apply to all tax shelters but only arrangements that are deemed to constitute a reportable or listed transaction.

20 See Blattmachr et al., Circular 230 and Preparer Penalties, supra note 4.

21 See Prop. Treas. Reg. § 1.6694-2(c)(3)(iii)

22 See id.
signing preparer researches an issue and concludes that there is a reasonable basis for the position to be taken. The preparer cannot, however, reach a more-likely-than-not conclusion “because it was impossible to make a precise quantification regarding whether the position would more likely than not be sustained on the merits.” Nonetheless, the Example concludes, the preparer is not subject to penalty even if no disclosure is made and the preparer gives no penalty advice to the taxpayer. It is difficult to square this Example with the statute. After all, the statute requires disclosure if the more-likely-than-not standard is not satisfied, making no exception for difficult cases involving a close call. Yet, one can easily understand the Internal Revenue Service’s willingness to provide relief for a preparer who, in good faith, carefully considers the issue and is simply unable to reach the rather artificial more-likely-than-not conclusion.

Although, as indicated, the proposed regulations do not carry over this Example, they do continue to reflect sympathy for the plight of such a preparer. They give preparers who are required to make a close call two grounds upon which to defend against the penalty. First, in setting forth the more-likely-than-not standard, they make the following factors relevant: the preparer’s level of experience; the preparer’s diligence in reaching the conclusion; the complexity of the issue; and the preparer’s familiarity with the area of tax law that is implicated and taxpayer’s affairs. Second, in fleshing out the reasonable cause and good faith defense contained in the statute, they explicitly provide that the complexity and/or technical nature of the issue are to be considered. They go on to provide that there may be justification for invoking the defense if the complex or technical nature of the issue is such that a competent preparer would have made the same error. (The defense is based on a variety of enumerated factors, with no single factor given determinative weight.) Thus, even though Example 10 is not part of the proposed regulations, the principles underlying the example have not been entirely disavowed.

The proposed regulations also address a problematic implication in another example in the Notice. In Example 3, an attorney gives tax advice regarding a proposed transaction. After it is consummated, the attorney gives no additional advice concerning the tax treatment of the transaction. Consistent with the provision in existing regulations, the example concludes that such pre-transaction advice does not render the attorney subject to preparer penalties. The difficulty, of course, is the implication that if the attorney had a short post-transaction conversation with the taxpayer or the person preparing the return about the treatment of the transaction on the return, he or she would be deemed a preparer for purposes of the penalty. The proposed regulations provide a salutary remedy. As long as the time incurred in giving the post-transaction advice is less than five percent of the total time incurred with respect to the position, such post-transaction advice does not constitute activity that is subject to the penalty. As a practical matter, this will make it important for preparers to keep accurate time records. Unfortunately, however, there is—at least at this time—no similar post-transaction exception in Circular 230 (which contains the ethical rules applicable to attorneys and CPAs who practice before the Service).

**THE WEIGHT OF AUTHORITY AND THE MORE-LIKELY-THAN-NOT STANDARD**

Unlike the Notice, the proposed regulations explore how the more-likely-than-not standard is to be applied in the context of different kinds of authorities. Of the four examples contained in the proposed regulations, three are of particular interest.

First, Example 1 (Prop. Treas. Reg. § 1.6694-2(b)(4)) indicates that the preparer’s well-reasoned construction of a newly enacted Code section can satisfy the standard. Thus, even if there is no existing authority to support the argument, it may be possible to reach a more-likely-than-not conclusion based on a reading of the statute alone.

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23 See Prop. Treas. Reg. § 1.6694-2(b). Surprisingly, the proposed regulations fail to utilize the same factors for purposes of determining whether the reasonable basis standard has been satisfied. See Prop. Treas. Reg. § 1.6694-2(c)(2). Perhaps, this was an inadvertent omission.


25 See id.


28 Section 10.34 of the Circular, which imposes standards similar to those contained in section 6694 of the Code, fails to provide a pre-transaction-advice exception. Thus, while practitioners may be immune from penalties under the Code for such advice, they may nonetheless remain subject to sanction under the Circular.

29 See Prop. Treas. Reg. § 1.6694-2(b)(4). No such guidance is given in the portion of the proposed regulations dealing with the reasonable basis standard, see Prop. Treas. Reg. § 1.6694-2(c), other than to cross reference Treas. Reg. § 1.6662-3(b)(3).

30 The fourth example, not considered in text, is straightforward. In the example (Example 2), the Code is amended to unambiguously deny the treatment sought by the taxpayer. The preparer concludes that the new provision is inequitable as applied to the taxpayer. The Example concludes that the preparer could not satisfy the more-likely-than-not standard.
Second, Example 3 (same regulation) considers a case where the preparer, in filing the 2007 return, finds three private letter rulings, issued in 2002 and 2003, which support the taxpayer’s position. However, after these rulings had been issued, temporary regulations were promulgated that took a contrary position. The Example concludes that the preparer may not rely on the private letter rulings in making the more-likely-than-not assessment. The interesting implication, of course, is that had the temporary regulations not been issued, the three rulings might well have constituted sufficient authority to satisfy the standard (and would presumably satisfy the reasonable basis standard as well).\footnote{The proposed regulation does cross-reference Treas. Reg. § 1.6662-4, which does explicitly provide that private letter rulings may be considered in determining whether the substantial-authority standard has been satisfied.}

Third, in Example 4 (same regulation), there are five circuit court cases relevant to the issue in circuits other than where the client resides, three of which were won by the taxpayer. The preparer determines that the client’s factual position is more similar to these three cases than to the other two won by the government. The Example concludes that the more-likely-than-not standard is satisfied. Unfortunately, the Example raises more questions than it answers. For example, if all five decisions had been based on identical facts, would the preparer be precluded from reaching a more-likely-than-not conclusion? And what if there is only one taxpayer-friendly circuit court decision? Can such a single authority serve as a predicate for a more-likely-than-not conclusion? What if there is authority in the circuit where the taxpayer resides?\footnote{Note that, in Treas. Reg. § 1.6662-4, the presence of home-circuit authority can prove to be critical for purposes of determining whether there is substantial authority for the taxpayer’s position: a favorable decision in the home circuit constitutes substantial authority, while unfavorable authority in other circuits does not preclude the taxpayer from making a substantial-authority showing. While the proposed regulations cross-reference Treas. Reg. § 1.6662-4, they do not make any reference to the portion of the regulation that deals with home-circuit authority.}

And, finally, could such home-circuit authority enable a preparer to reach a more-likely-than-not conclusion if other circuits had taken a contrary view? Perhaps, some, or all, of these questions will receive attention in the final regulations.

CONCLUSION: AVOIDING PREPARER PENALTIES

Preparers must take seriously an important theme in the proposed regulations: that willful violations or a pattern of errors will be treated more harshly than isolated or innocent mistakes. The proposed regulations reflect this theme at three different junctures. First, in discussing the potential overlap between section 6694 and Circular 230,\footnote{Section 10.34 of the Circular will, once pending amendments are finalized, mirror the two-tier approach in section 6694, requiring the preparer to reach either a reasonable-basis conclusion if disclosure is made or a more-likely-than-not conclusion if it is not. Interestingly, however, section 10.34 is not perfectly congruent with the proposed regulations. Most significant, unlike the proposed section 6694 regulations, it does not, at least under the pending amendment, permit the preparer to qualify for the lower standard by giving the client penalty advice. Perhaps, they will be made congruent once the section 6694 regulations are finalized.} the preamble indicates that a violation of section 6694 will not automatically lead to a referral to the Office of Professional Responsibility. In the absence of a pattern or willful behavior, in other words, a referral—and the potential threat of disbarment from practice before the Internal Revenue Service that such a referral poses—is inappropriate. Second, in explicating how the more-likely-than-not standard will be enforced, the proposed regulations focus on, among other things, the level of the preparer’s experience, the preparer’s familiarity with the client’s affairs and whether the provision at issue is of a complex or technical nature. Third, the factors that must be considered under the proposed regulations where a preparer invokes the reasonable-cause-and-good-faith defense similarly reflect this theme: frequency of errors; the materiality of the errors; reliance on the advice of others; the technical or complex nature of the Code provision; and the firm’s review practices.\footnote{See Prop. Treas. Reg. § 1.6694-2(d).} As this list of factors reveals—particularly the last factor mentioned—preparers who implement appropriate review practices and who diligently attempt to comply with the requirements of section 6694 will find that the likelihood of penalty—or referral to the Office of Professional Responsibility—greatly reduced. In short, more than anything else, the proposed regulations make clear the need for preparers to start instituting and enforcing policies that will enable them to demonstrate good faith when errors do occur.