



TAX ADVISOR

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SHIFTING SAND FOR ADVISORS AND PREPARERS UNDER PROPOSED PENALTY REGULATIONS

May 25, 2007 just seemed like any ordinary Friday to many Advisors. However, it was the day that many more Advisors became liable under the New Penalty Regulations.

Every day, Advisors give advice regarding transactions that involve tax issues. "But I'm not a Tax Preparer." is the usual retort. "When I use a word," Humpty Dumpty said in a rather a scornful tone, "it means just what I choose it to mean, neither more nor less."¹

Who gets invited to the Tea Party? Effective May 25, 2007, all tax returns are subject to Section 6694, including income, estate, gift, payroll, foundation, and excise tax returns. In addition, informational returns, such as S Corporation and Partnership returns, are also subject to Section 6694.

This can include schedules attached to returns, such as allocation of profit and losses pursuant to a limited partnership agreement (Gould v. U.S. 717 F. Supp. 545, N.D. Ill., 1989). In the Estate and Gift tax arena this would likely include preparing a family limited partnership as well as filing the gift tax return. Treasury Regulation 301.7701-15(b)(1)-(2) provides the definition of what a "substantial portion of return" means.

Are there new IRS Regulations? On June 16, 2008, the IRS proposed Regulations addressing who gets invited to the Penalty Party. This includes revised definitions for Signing Tax Preparers and Non-Signing Tax Preparers.

What are the Changes to the Signing Tax Return Preparer? While Section 1.6694-1(b)(1) generally provides that there is only one signing tax preparer per firm, the new Proposed Regulations provide that there can be multiple tax return preparers based on the scope of their responsibility. Further, the Firm can be fined as a Preparer where the firm's review procedures were disregarded. The Preparer's advice must adhere to the MLTN standard.

Who is the Non-Signing Tax Preparer? This can include anyone who provides oral or written tax advice with respect to an event that has already occurred at the time the advice is rendered. If the advice gives rise to an item less than \$10,000 (or less than \$400,000 if the taxpayer's income is greater than \$2,000,000), then the item is disregarded. Further, the most significant modification of the non-signing tax preparer rule under the Proposed Regulations includes an exception for advice given. If the time spent on the post event advice represents less than 5% of the aggregate time billed on the matter, such advice is not considered in determining if the advisor is a tax return preparer.

Rely on Steve Robison, Esq. to successfully assist you with your tax planning issues and IRS audits through appeals and Tax Court. Steve Robison has assisted Professional Advisors and their clients since 1986. Our business alliance has rewritten the book on professional practice. Our alliance partners can rely on our extensive knowledge, experience and capability in the area of tax controversy and litigation, as well as a broad range of tax planning, which augments our extensive controversy knowledge. Steve Robison, Esq. has been Board Certified in Federal Tax Law since 2002.



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¹ Through the Looking Glass by Lewis Carroll

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