

## Preparer Penalty Standard Rolled Back To "Substantial Authority"

One of the provisions of the economic stabilization package (H.R. 1424) enacted on October 3, 2008, rolls the preparer penalty standard back to "substantial authority" except for items relating to tax shelters or listed transactions, for which the standard remains "more likely than not." The rollback is effective retroactive to May 25, 2007. The text of the provision as enacted is set forth below.

### SEC. 506. Modification Of Penalty On Understatement Of Taxpayer's Liability By Tax Return Preparer.

(a) In General — Subsection (a) of section 6694 is amended to read as follows:

“(a) Understatement Due to Unreasonable Positions —

(1) IN GENERAL — If a tax return preparer —

(A) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(B) knew (or reasonably should have known) of the position,

such tax return preparer shall pay a penalty with respect to each such return or claim 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 with respect to the return or claim.

(2) UNREASONABLE POSITION —

(A) IN GENERAL — Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

(B) DISCLOSED POSITIONS — If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(C) TAX SHELTERS AND REPORTABLE TRANSACTIONS — If 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, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

(3) REASONABLE CAUSE EXCEPTION — No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.”

(b) Effective Date — The amendment made by this section shall apply —

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(1) in the case of a position other than a position described in subparagraph (C) of section 6694(a) (2) of the Internal Revenue Code of 1986 (as amended by this section), to returns prepared after May 25, 2007, and

(2) in the case of a position described in such subparagraph (C), to returns prepared for taxable years ending after the date of the enactment of this Act.

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