

## TAX RETURN PREPARER AND ADVISOR STANDARDS REVISED

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The IRS recently issued new rules that tinker with the ethical standards for tax return preparers, and persons advising taxpayers in regard to positions taken on a return.

These provisions reside in §10.34 of the Circular 230 regulations that govern ethical standards and discipline for tax practitioners before the IRS. The provisions are separate and apart from similar (and overlapping) rules under Code §6694 which relate to penalties that may be imposed on return preparers under the Internal Revenue Code.

Essentially, there are 3 courses of conduct that may get a preparer in trouble under the new Circular 230 rules. The same items apply to persons signing a return or claim for refund and persons advising taxpayers on adopting a return position:

- a. If the position lacks a reasonable basis;
- b. If it is an unreasonable position under Code §6694(a)(2) (relating to the Code penalties on tax preparers); or
- c. If the position is a willful attempt to understate liability or is a reckless or intentional disregard of rules and regulations.

Note that it is possible that the position have a reasonable basis, with a violation still occurring. This is because under Code §6694(a)(2), a reasonable basis will not protect a practitioner against penalties for certain tax shelter and listed transaction standards, nor for positions that lack “substantial authority” if required disclosure rules are not complied with.

However, the preamble to the new rules does provide that a violation of Code §6694(a)(2) is not a *per se* or automatic violation of Circular 230. An independent determination as to whether the practitioner engaged in willful, reckless or grossly incompetent conduct will be made before such a violation is found.

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