

Part III – Administrative, Procedural, and Miscellaneous

CLARIFICATION OF NOTICE 2007-54 PROVIDING GUIDANCE AND TRANSITIONAL RELIEF UNDER THE PREPARER PENALTY PROVISIONS OF THE SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007

NOTICE 2008-11

This notice clarifies Notice 2007-54, 2007-27 I.R.B. 12, which provided guidance and transitional relief for the tax return preparer penalty provisions under section 6694 of the Internal Revenue Code, as amended by the Small Business and Work Opportunity Tax Act of 2007.

BACKGROUND

The Small Business and Work Opportunity Tax Act of 2007 (the Act), Pub. L. No. 110-28, 121 Stat. 190, was enacted on May 25, 2007. Section 8246 of the Act amended several provisions of the Code to extend the application of the income tax return preparer penalties to all tax return preparers, alter the standards of conduct that must be met to avoid imposition of the penalties for preparing a return which reflects an understatement of liability, and increase applicable penalties. The amendments are effective for tax returns prepared after the date of the enactment, May 25, 2007.

In order to provide sufficient time to address issues pertaining to the implementation of the Act, the Treasury Department and the IRS issued Notice

2007-54 on June 11, 2007, and which provided the following transitional relief: For income tax returns, amended returns, and refund claims, the standards set forth under the previous law and current regulations under section 6694 will be applied in determining whether the IRS will impose a penalty under section 6694(a), as amended by the Act. Notice 2007-54 provided that generally, in applying transitional relief for income tax returns, amended returns or refund claims, disclosure would be adequate if made on a Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, attached to the return, amended return, or refund claim, or pursuant to the annual revenue procedure authorized in Treasury Regulation sections 1.6694-2(c)(3) and 1.6662-4(f)(2).

Notice 2007-54 further provided that for all other returns, amended returns, and claims for refund, including estate, gift, and generation-skipping transfer tax returns, employment tax returns, and excise tax returns, the reasonable basis standard set forth in the regulations issued under section 6662, without regard to the disclosure requirements contained therein, will be applied in determining whether the IRS will impose a penalty under section 6694(a).

Notice 2007-54 provided that the transitional relief applies to all returns, amended returns, and refund claims due on or before December 31, 2007 (determined with regard to any extension of time for filing), and to 2007 employment and excise tax returns due on or before January 31, 2008. Notice 2007-54 also provided that no transitional relief was provided under section

6694(b) as transitional relief is not appropriate for tax return preparers who exhibit willful or reckless conduct, regardless of the type of return prepared.

TRANSITIONAL RELIEF CLARIFICATIONS

Questions have arisen regarding the extent to which amended returns or claims for refund qualify for transitional relief under Notice 2007-54. There is no set due date for such returns and claims other than prior to the expiration of the period proscribed by the applicable statute of limitations. The transitional relief described in Notice 2007-54 applies to timely amended returns or claims for refund (other than 2007 employment and excise tax returns) filed on or before December 31, 2007, and to timely amended employment and excise tax returns or claims for refund filed on or before January 31, 2008 .

Questions have arisen regarding the extent to which original tax returns due on extension after December 31, 2007, but filed before December 31, 2007, qualify for transitional relief. The transitional relief described in Notice 2007-54 applies to original returns (other than 2007 employment and excise tax returns) filed on or before December 31, 2007, and to original employment and excise returns filed on or before January 31, 2008.

Questions have also arisen regarding the extent to which advice rendered by nonsigning preparers qualifies for transitional relief under Notice 2007-54. The transitional relief described in Notice 2007-54, as clarified by this notice, applies to nonsigning preparers for advice provided on or before December 31, 2007.

In future guidance, the Treasury Department and the IRS intend to provide transitional rules to address amended returns filed after the expiration of the transitional relief period described in Notice 2007-54 that relate to original returns filed under previous law or during the transitional relief period, as clarified by this notice.

EFFECTIVE DATE

This notice is effective as of May 25, 2007.

EFFECT ON OTHER DOCUMENTS

Notice 2007-54, 2007-27 I.R.B. 12, is clarified.

CONTACT INFORMATION

The principal authors of this notice are Matthew S. Cooper and Michael E. Hara of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Mr. Cooper at (202) 622-4940 or Mr. Hara at (202) 622-4910 (not toll-free calls).