

IRS News Release

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Treasury, IRS Implement Enhanced Standards of Conduct for Tax Return Preparers; Plan Overhaul of Tax Return Preparer Regulatory Regime

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WASHINGTON — The Treasury Department and the Internal Revenue Service today issued Notice 2008-13 that implements a May 2007 law that expanded the tax return preparer penalty and heightened the standards of conduct that must be met by tax return preparers in order to avoid that penalty.

Notice 2008-13 also solicits input from the tax return preparer community on a planned overhaul of the tax return preparer penalty regime anticipated to be completed by the end of 2008.

“The plan to take a fresh look at the preparer penalty regulations will be a top priority for us in 2008,” said IRS Chief Counsel Don Korb. “We look forward to receiving comments from all interested parties on their recommendations for the final regulations. Our goal is to complete our work on the overhaul of these rules by the end of 2008,” he said.

For undisclosed positions on a tax return, the new law replaced the realistic possibility standard with a requirement that there be a reasonable belief that the tax treatment of the position would more likely than not be sustained on its merits. In cases in which the taxpayer discloses the position on the tax return, the notice implements the new law that states there must be a reasonable basis for the tax treatment of the position taken on the tax return.

The notice provides interim rules to implement and interpret these heightened standards. The interim rules will be in effect until the overhaul of the current return preparer penalty regulations is complete. The interim rules emphasize the importance to preparers of understanding the legal basis for positions taken on tax returns, the requirement for taxpayers to disclose certain positions, and the need for preparers to advise taxpayers on the various penalties that can apply when a position is taken on a return that may not be supported by existing law.

Under the notice, preparers generally can continue to rely on taxpayer representations in preparing returns and can also generally rely on representations of third parties, unless the preparer has reason to know they are wrong.

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The new law also expanded the return preparer penalty to cover all tax return preparers, not just income tax return preparers. Under the notice, preparers of many information returns, however, will not be subject to the new penalty provision unless they willfully understate tax or act in reckless or intentional disregard of the law. The notice also includes examples illustrating how the new standards would apply.

In addition to Notice 2008-13, additional guidance has been provided in Notice 2008-12 with respect to the implementation of the tax return preparer signature requirement, and in Notice 2008-11, which clarifies the transition relief provided in Notice 2007-54, issued earlier this year.