

NEW RETURN PREPARER STANDARDS

Bob Kane
LeSourd & Patten, P.S.
(206) 624-1040
rkane@lesourd.com

1) CHANGES

- Applies to more than just income tax returns
- Penalty amount substantially increased (up to 50% of the fees for preparing)
- New standard: practitioners must have a reasonable belief that an undisclosed position would more likely than not be sustained on its merits

2) EVERYONE CAUGHT OFF GUARD

- Idea for new standard has been out there for a number of years
- But even IRS did not request or anticipate this change (to extent that transitional guidance had to be issued effectively delaying effective date until January 1, 2008)

3) WHO IS A PREPARER?

- Broad reach of provision –don't have to sign or even see the return
- Non-signers who give advice regarding substantial portion of return are preparers
- Only one individual per firm
- Firm also can be hit with penalty

4) ISSUES

- How is “more likely than not” determined?
- How far do you have to go to ascertain the facts?
- Are practitioners out of the business of being advocates for their clients?
- What about the conflict of interest that arises with client when there is substantial authority but no more?
 - Will taxpayers be forced to prepare their own returns or make disclosures to protect their preparer?
- Will preparers insist on second opinions from practitioners outside their firm?
- Will malpractice claims against practitioners increase?
- Will returns cost more to prepare?
- Will tax opinions be more costly?
- Will IRS agents routinely assert the penalty anytime there is an adjustment?
- Will IRS seek large penalty (50% of fee) when small error made in taking position on return?
- Will preparer's fate hinge on whether the taxpayer discloses?
- Will the IRS apply both Circular 230 monetary penalty and IRC Section 6694 at same time?