

CB-NOTICE, 2008FED ¶46,405, **Penalties, civil: Tax return preparers: Supplemental guidance. —, Notice 2008-46 (April 16, 2008)**

Notice 2008-46, I.R.B. 2008-18, April 16, 2008.

[\[Code Sec. 6694\]](#)

Penalties, civil: Tax return preparers: Supplemental guidance. —The IRS has issued additional guidance regarding implementation of the tax return preparer penalty provisions of [Code Sec. 6694](#), as amended by the Small Business and Work Opportunity Tax Act of 2007 ([P.L. 110-28](#)). Certain returns and other documents to which preparer penalties may apply have been added to those listed in Exhibits 1, 2 and 3 of [Notice 2008-13](#). [Notice 2008-13](#), I.R.B. 2008-3, 282, is supplemented. Back references: [¶39,956A.01](#), [¶39,956A.02](#), [¶39,957A.01](#), [¶39,957A.022](#), [¶39,957A.023](#), [¶39,957A.03](#) and [¶39,960.70](#).

This notice provides guidance regarding implementation of 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, Pub. L. No. 110-28, 121 Stat. 190, by adding certain returns and documents supplementing Exhibits 1, 2, and 3 of [Notice 2008-13](#), 2008-3 I.R.B. 282.

A. Returns and Claims for Refund Subject to 6694 Penalty

[Notice 2008-13](#) describes categories of returns and other documents to which [section 6694](#) could apply. [Notice 2008-13](#) provides that, solely for purposes of [section 6694](#), a return or claim for refund includes the tax returns listed in Exhibit 1 or a claim for refund with respect to any such return. The Notice further provides that a person who for compensation prepares all or a substantial portion of any of the tax returns listed on Exhibit 1 is a tax return preparer who is subject to [section 6694](#).

[Notice 2008-13](#) also provides that solely for purposes of [section 6694](#), an information return or document listed on Exhibit 2 that includes information that is or may be reported on a taxpayer's tax return or claim for refund is a return to which [section 6694](#) could apply if the information reported constitutes a *substantial portion* of that taxpayer's tax return or claim for refund. A person who for compensation prepares any of the information returns or documents listed on Exhibit 2, which return or document does not report a tax liability but affects an entry or entries on a tax return and constitutes a substantial portion of the tax return or claim for refund that does report a tax liability, is a tax return preparer who is subject to [section 6694](#).

[Notice 2008-13](#) also provides that solely for purposes of [section 6694](#), a document listed on Exhibit 3 that includes information that is or may be reported on a taxpayer's tax return or claim for refund (and that constitutes a substantial portion of such tax return or claim for refund) will not subject the preparer to a penalty under [section 6694\(a\)](#). A document listed on Exhibit 3, however, may subject the preparer to a willful or reckless conduct penalty under [section 6694\(b\)](#) if the information reported on the document constitutes a substantial portion of the tax return or claim for refund and is prepared willfully in any manner to understate the liability of tax on a tax return or claim for refund, or in reckless or intentional disregard of rules or regulations. A person who for compensation prepares all or a substantial portion of any of the documents listed on Exhibit 3 is not a tax return preparer subject to [section 6694\(a\)](#) unless the document was prepared willfully in any manner to understate the liability of tax on a tax return or claim for refund or in reckless or intentional disregard of rules or regulations.

[Notice 2008-13](#) also provides that the Treasury Department and the Internal Revenue Service may add or remove forms or documents from any of the categories or exhibits to [Notice 2008-13](#) in future guidance. Accordingly, the following returns and documents are added to Exhibits 1, 2, and 3 of [Notice 2008-13](#):

Exhibit 1 - Tax Returns Reporting Tax Liability

- (1) Form 1040-C, U.S. Departing Alien Income Tax Return;
- (2) Form 1040NR, U.S. Nonresident Alien Income Tax Return;
- (3) Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents;
- (4) Form 1041-N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts;
- (5) Form 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts;
- (6) Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation;
- (7) Form 1120-H, U.S. Income Tax Return for Homeowners Associations;
- (8) Form 1120-L, U.S. Life Insurance Company Income Tax Return;
- (9) Form 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons;
- (10) Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return;
- (11) Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations;
- (12) Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts;
- (13) Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies;
- (14) Form 1120-SF, U.S. Income Tax Return for Settlement Funds (Under [Section 468B](#));
- (15) Form 1040-SS, U.S. Self-Employment Tax Return;
- (16) Form 2438, Undistributed Capital Gains Tax Return;
- (17) Form 8288, U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests;
- (18) Form 8752, Required Payment or Refund under [Section 7519](#); and
- (19) Form 8804, Annual Return for Partnership Withholding Tax ([Section 1446](#)).

Exhibit 2 - Information Returns That Report Information That is or May be Reported on Another Tax Return That May Subject a Tax Return Preparer to the [Section 6694\(a\)](#) Penalty if the Information Reported Constitutes a Substantial Portion of the Other Tax Return

- (1) Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts;

- (2) Form 3520-A, Annual Return of Foreign Trust With a U.S. Owner;
- (3) Form 5471, Report by Shareholders of a Foreign Corporation;
- (4) Form 5472, Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business;
- (5) Form 8805, Foreign Partner's Information Statement of [§1446](#) Withholding Tax;
- (6) Form 8858, Information Return of US Person with Respect to Disregarded Entities; and
- (7) Form 8865 - Return of U.S. Persons with Respect to Certain Foreign Partnerships.

Exhibit 3 - Forms That Would Not Subject a Tax Return Preparer to the [Section 6694\(a\)](#) Penalty Unless Prepared Willfully in any Manner to Understate the Liability of Tax on a Return or Claim for Refund or in Reckless or Intentional Disregard of Rules or Regulations

- (1) Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests; and
- (2) Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.

EFFECTIVE DATE

This notice is effective as of April 16, 2008.

EFFECT ON OTHER DOCUMENTS

[Notice 2008-13](#), 2008-3 I.R.B. 282, is supplemented.

CONTACT INFORMATION

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