Tax Controversy Corner

This Will Keep You Up at Night: Firm and Partner Liability for Other Professionals' Noncompliance

By Megan L. Brackney

A recent district court decision involving the IRS's assessment of over *$11 million* in penalties against a law firm for failing to provide information caught the attention of many tax practitioners. This column discusses that case, *Callister Nebeker & McCullough*,[1] as well as other areas in which a law firm or accounting firm, or the partners of a firm, can be liable for the noncompliance of partners and employees.[2] Specifically, this column discusses firm liability for list maintenance and reportable transaction penalties under Code Secs. 6707 and 6708, sanctions against firms and persons with principal authority under Circular 230 and Code Sec. 6694 and firm liability for promoter penalties under Code Secs. 6700 and 6701. The theme that runs through these provisions for penalties and sanctions is that a firm can minimize its liability by having procedures in place to ensure compliance before any violation occurs. This article concludes with some suggestions for law firm procedures, both to keep problems from occurring in the first place and to demonstrate reasonable cause if a partner or employee commits a violation.

Callister Nebeker and Code Sec. 6708 Penalties

In *Callister Nebeker*, the IRS assessed penalties of *$11,280,000* under Code Sec. 6708. The Code requires material advisors to prepare and maintain lists of reportable transactions and relevant information and furnish such lists, as well as documents related to the transactions, upon written request of the IRS.[3]

Under Code Sec. 6708, a material advisor who fails to furnish the list upon request is subject to a penalty of $10,000 for *each calendar day* after the twentieth *business* day that the material advisor fails to provide the list.[4] The penalty applies to the law firm or other organization and not the individual attorneys or professionals.[5] The penalty accrues daily and continues for each calendar day until, and including, the day the person's failure to furnish a list in the required form ends.[6] There is no maximum penalty amount, and the penalty is cumulative.[7] There is a reasonable cause exception to the penalty.[8] The advisor's reasonable cause is evaluated for each day that the list was not produced.[9]

In *Callister Nebeker*, the plaintiff is a law firm whose practice includes providing advice about employee benefit plans and tax matters.[10] The IRS determined

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that certain ERISA[11] transactions were potentially abusive tax shelters that should have been reported under the tax shelter registration rules in existence at the time.[12] The IRS requested the list under Code Sec. 6112, but Callister Nebeker argued that the transaction was not in fact a potentially abusive tax shelter and that even if it were, producing the list would violate their clients' attorney-client privilege. After two summons enforcement proceedings, the IRS assessed a penalty of $11,280,000, *i.e.,* $10,000 for each of the 1,128 days that had passed from the date of the second summons until the list was turned over.[13] Callister Nebeker argued that that it had acted reasonably and in good faith in waiting to turn over the list based on its claim of attorney-client privilege and also based on advice of its counsel. The district court found that whether the firm had demonstrated reasonable cause was a factual issue that could not be decided by motion.[14] We will have to wait for further proceedings to learn the outcome of *Callister Nebeker* and whether the court will approve of a penalty of over $11 million for the mere failure to timely turn over information. In the meantime, *Callister Nebeker* should serve as a wakeup call to firms to take their list maintenance obligations seriously.

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As can be seen from the *Callister Nebeker* case, because the penalty can be so onerous, a viable reasonable cause defense can be crucial to a law firm faced with list maintenance penalties. Proposed regulations provide standards for the IRS to determine whether a firm acted with reasonable cause, both for penalty purposes and for granting extensions of the strict 20-business day deadline.[15] Reasonable cause may be satisfied by showing that the law firm exercised ordinary business care.[16] To show ordinary business care, the firm may "show that it established, and adhered to, procedures reasonably designed and implemented to ensure compliance" with the list maintenance requirements.[17]

In an example in the proposed regulations, the firm's procedures were key to the grant of an extension based on reasonable cause for the request.[18] The example explains that "Firm A," a large law firm that is a material advisor, received a list maintenance request from the IRS, but could not readily locate the documents necessary to respond to the list relating to one of its reportable transactions. In stating that the IRS should grant an extension, the example points to Firm A's office procedures that were in place prior to the list maintenance request. These procedures included conducting annual sessions to educate the firm's professionals about reportable transactions and the reporting obligations and instructing the firm's professionals to compile the information and documents required to be maintained under Code Sec. 6112. The example states that these procedures were "reasonably designed and implemented to ensure compliance."[19]

Code Sec. 6707 Penalties

In addition to the list maintenance penalties discussed above, there are harsh penalties for firms that fail to report reportable transactions. As these are strict liability penalties, even if the firm's practice does not ordinarily concern reportable transactions, tax professionals should be aware of these rules. Under Code Sec. 6707, a material advisor who is required to file a return under Code Sec. 6111(a) with respect to a reportable transaction (Form 8918, *Material Advisor Disclosure Statement*) is subject to a penalty of $50,000 for failure to timely file such return or for filing a return containing false or incomplete information.[20] The Code Sec. 6707 penalty is increased if the reportable transaction is a listed transaction, in which case the penalty is the greater of $200,000 or half of the gross income derived by the material advisor with respect to the given aid, assistance or advice related to such transaction before the date the return is to be filed.[21] If the failure or action upon which the penalty is based is intentional, then the penalty is increased by the greater of $200,000 or 75 percent of the gross income so derived.[22]

As noted above, this is a strict liability penalty, and thus the firm cannot raise reasonable cause defenses to avoid it. However, the IRS has authority to rescind all or a portion of this penalty if the violation does not relate to a listed transaction and rescission promotes compliance with the Code and effective tax administration.[23] The IRS does not have authority to rescind the penalty for failure to report listed transactions, and, thus, this penalty is truly one of strict liability. In considering whether to rescind the penalty for nonlisted reportable transactions, the IRS looks at all of the facts and circumstances.[24] An "important factor" in determining reasonable cause and good faith "is the extent of the material advisor's efforts" to determine the filing requirement.[25] Accordingly, as is discussed at the end of this column, it is important for the firm to have procedures in place to identify reportable transactions and file the appropriate returns. These procedures will help the firm avoid violating the law, but also will provide the firm with a defense to penalties if a partner or other professional at the firm does not comply.

Sanctions Under Circular 230 and Penalties Under Code Sec. 6694

So far, this article has discussed firm liability. The 2014 amendments to Circular 230 contain specific procedures for firms to ensure compliance, and these provisions apply to individual members of the firm who have "principal authority and responsibility for overseeing a firm's practice."[26] The Treasury included these provisions based on its perception that "[f]irm responsibility is a critical factor in ensuring high quality advice and representation for taxpayers."[27]

Tax professionals who have "principal authority" must "take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees" for the purpose of complying with Circular 230.[28] Any individual with such principal authority will be subject to discipline if the individual, "through willfulness, reckless, or gross incompetence," does not take reasonable steps to ensure that the firm has adequate procedures and that those procedures are followed, and that one or more members, associates or employees of the firm have engaged in a "pattern or practice" of failing to comply with Circular 230.[29] An individual with principal authority also will be subject to discipline if he or she knows or should know that one or more members, associates or employees of the firm are, or have, engaged in a pattern or practice that does not comply with Circular 230, and the individual, "through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance."[30]

In guidance,[31] the Office of Professional Responsibility (OPR)[32] provides the following Q&A to illustrate the impact of Section 10.36:

> *Question:* I think my business partner is advising his clients to take credits for which they do not qualify. We have never had policies involving supervision or training since we are both licensed and neither of us "manages" the other. Can I be sanctioned for his negligent or reckless actions?
>
> *Answer:* Yes. The IRS may designate one or more individuals to be responsible for the firm's compliance with Circular 230. If you know or should have known of others within your firm who are engaged in a pattern or practice in violation of Circular 230, you could be held accountable for failure to correct the noncompliance, even if it involves individuals who you do not supervise.

In addition to individuals with principal authority, a law firm itself is subject to sanctions under Circular 230. Section 10.50(c) authorizes the Treasury to impose a monetary penalty on a firm. If a practitioner who engages in conduct subject to sanction "was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty," and the employer, firm or other entity "knew, or reasonably should have known, of such conduct," a monetary penalty may be imposed.[33] An attorney is considered to have acted on behalf of an employer, firm or other entity if: (i) an agency relationship existed; (ii) the purpose of such agency relationship was to provide services in connection with practice before the IRS; and (iii) the prohibited conduct giving rise to the penalty arose in connection with the agency relationship.[34] Further, the employer, firm or other entity is deemed to have known or reasonably should have known of the prohibited conduct if: (i) one or more members of the management of the employer, firm or other entity know or have information from which a person with similar experience and background would reasonably know of the prohibited conduct; or (ii) the employer, firm or other entity failed to take reasonable steps to ensure compliance with Circular 230 due to willfulness, recklessness or gross indifference; and (iii) one or more individuals associated with the employer, firm or other entity engaged in prohibited conduct that harms a client, the public or tax administration, or represents a pattern or practice of noncompliance with Circular 230.[35]

When determining whether to impose a monetary penalty on an employer, firm or other entity, OPR will consider factors such as the gravity of the misconduct, any history of noncompliance and the preventative and corrective measures taken by the employer, firm or other entity.[36] Again, the firm's procedures for compliance are key to avoiding sanctions. The monetary penalties can be as high as the gross income derived or to be derived from the conduct giving rise to the penalty.[37]

To date, there have been no monetary penalties imposed under Section 10.50. However, this may change in the future as the recent former head of OPR stated that she was "working hard to raise 'consciousness'" about monetary penalties within the IRS.[38] Even without the immediate threat of monetary sanctions, law firms and accounting firms should take Circular 230's provisions seriously. It is an independent violation of Circular 230 for a practitioner to knowingly, either directly or indirectly, accept assistance from, or assist, any person who is under disbarment or suspension from practice before the IRS if the assistance relates to a matter or matters constituting practice before the IRS.[39] Thus, for example, if an attorney of the firm is disbarred from practice before the IRS, the law firm may no longer be able to employ that person or to maintain a partnership with him or her.

Treasury regulations contain a provision for firm penalties under Code Sec. 6694. This Code Section authorizes the IRS to impose penalties against tax return preparers who have taken "unreasonable positions" on a return or claim for refund or have engaged in willful or reckless misconduct in the preparation of a return or claim for refund.[40] "Tax return preparers" include both the "signing preparers," who actually sign and file a return or claim for refund with the IRS, and "nonsigning preparers," who, with certain exceptions, advise on a substantial portion of a return or claim for refund.[41]

Treasury Regulations provide that a tax return preparer, and the firm that employs the preparer or the firm of which is preparer is a partner, may be subject to penalties under Code Sec. 6694.[42] The penalty is the greater of $1,000 for each return or claim or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.[43] If the conduct was willful or due to willful or reckless conduct, the penalty is the greater of $5,000 or 50 percent of the income derived (or to be derived).[44]

There is a reasonable cause defense to Code Sec. 6694(a).[45] The regulations identify several factors that are considered in determining whether the exception is applicable. Most important for the law firm is the normal office practice, *i.e.,* whether the normal office practices are such that the error in question would rarely occur, and the normal office practice was followed in preparing the return.[46]

Code Sec. 6700 and 6701 Penalties

In addition to the sanctions and penalties described above, there are two other penalties that can be imposed against firms that merit discussion. First, under Code Sec. 6700, the IRS may impose a civil penalty on any person who organizes, assists in organizing or participates in the sale of any partnership, investment or other "plan or arrangement," and who, in connection therewith, either: (i) makes a statement which he or she knows, or has reason to know, is materially false or fraudulent as to any tax benefit to be derived from the plan or arrangement; or (ii) makes a "gross valuation overstatement" as to any "material matter."[47] For Code Sec. 6700, as well as Code Sec. 6701, discussed below, a partnership, *e.g.,* a law firm or accounting firm, is a "person."[48]

The amount of the penalty is $1,000 for "each activity" in violation of the statute, or, if the firm establishes that it is less, 100 percent of the firm's gross income from such activity.[49] The organization of the tax shelter is treated as a separate activity from the participation and sale of interests in the shelter.[50] This can cause the amount of the penalty to become very large, as is illustrated by two examples from *Hargrove & Costanzo*,[51] and *Grant, Konvalinka & Harrison, PC*,[52] which both involved the assessment of Code Sec. 6700 penalties against law firms that promoted bond issues that they falsely represented as qualified tax-exempt government bonds.

In *Hargrove*, the IRS calculated the penalty based on the number of different customers that purchased the bonds (4,143 customers times $1,000). In *Grant*, the IRS calculated the penalty based on the total number of bonds sold (107,656 bond sales times $1,000). The *Grant* court was critical of the *Hargrove* court's interpretation of Code Sec. 6700 of treating each customer as a violation instead of each individual bond sale.[53] As the meaning of "each activity" remains unclear after these two cases, the IRS has flexibility to maximize penalties against law firms and accounting firms who have violated Code Sec. 6700.

Next, under Code Sec. 6701, the IRS may impose a civil penalty on any person who: (i) aids or assists in, procures or advises with respect to the preparation or presentation of any return or other document, (ii) which he or she knows or has reason to believe will be used in connection with a material matter, and (iii) which he or she knows that, if used, will result in the underpayment of tax liability by another person.[54] Like Code Sec. 6700, a partnership may be a "person" subject to the penalty.[55] The penalty is $1,000 for noncorporate taxpayers and $10,000 for corporate taxpayers.[56] The Code Sec. 6701 penalty applies to each understatement by a taxpayer and thus can be substantial. For example, in *W.T. Kuchan*,[57] an accountant prepared a single document, a form cover letter, which was used by a tax shelter promoter to disseminate copies of the Schedule C showing the losses claimed from the shelter to 191 tax shelter investors. The penalty was $191,000 because the accountant issued 191 false Schedule Cs, causing 191 investors each to claim deductions he knew to be false.

There is a split of authority as to whether the Code Sec. 6701 penalty can be assessed against both the partnership and the individual partners. In the case of *In re Tax Refund Litigation*,[58] the court considered whether the IRS could assess penalties for promoting abusive tax shelters against the partnership formed to promote the shelters as well as the individual partners. The court held that assessing penalties at both levels constituted an impermissible double penalty because the penalties related to the same conduct and fell upon the same individuals, as the partners were jointly and severally liable to the full extent of their assets for any penalty imposed upon the partnership under New York law.[59] The court considered whether there was any evidence that Congress had intended a double penalty to be imposed on the assets of tax shelter promoters who operate through partnerships, but found no such history.[60] The court held that "neither the tax nor the legislative history of Code Sec. 6700 clearly indicate that Congress sought to impose a double penalty upon tax shelter promoters who act in the form of a partnership."[61] The U.S. Court of Appeals for the Second Circuit affirmed this portion of the district court's decision, although noting that the question was "a close one."[62]

In *Bailey Vaught Robertson & Co.* (*BVR*),[63] the court disagreed with the reasoning of *In re Tax Refund Litigation*. The *BVR* court took a different approach and looked to whether there was any evidence that Congress intended that penalties not be assessed against both the partners and the partnership. The court explained that the clear language of Code Sec. 6700 allowed for penalties against individuals as well as partnerships, and there was nothing in the statute saying that penalties cannot be assessed against both. The district court also noted that the penalties were intended to be punitive and that there is no authority for the position "that Congress's decision to impose these punitive measures in a sweeping fashion is in any way improper."[64]

The IRS has acknowledged this split of authority, and not surprisingly, has agreed with the multiple-penalties approach of *BVR*.[65] Since these decisions, there have been no new cases or administrative guidance on this issue, and thus it should be assumed that for partnerships outside of the Second Circuit, the IRS would seek to impose multiple penalties in circumstances where it can establish the requirements of Code Sec. 6700 for both the individual and the partnership.

Suggestions for Compliance with Circular 230 and Avoiding Penalties

The above description of the penalties, many of which are extremely harsh, will keep you up at night, but knowing that your firm has procedures in place to comply with law should help you rest easy.

First, every attorney in the tax department should receive and acknowledge having read Circular 230 and, if applicable, the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Tax Services.[66] The firm should ensure that all tax professionals receive continuing legal education that includes discussion of Circular 230 and other ethical guidelines that apply to tax return preparation and tax advice, such as the AICPA Statements.

Next, although many law firms and accounting firms do not regularly act as material advisors with respect to reportable transactions, because the penalties for failure to comply with the list maintenance requirements and reporting obligations are so onerous, all firms that give tax advice should consider including some training in this area. Specifically, the firm should require professionals to receive training on the definition of a reportable transaction, including the IRS's notices identifying listed transactions and transactions of interest.[67] In addition, because the loss transaction category of reportable transactions is very broad and can include many nonabusive transactions, the firm should ensure that tax professionals at the firm are able to identify loss transactions that may be subject to reporting. The firm should also provide training on the list maintenance and reporting requirements for reportable transactions and have a protocol in place for compliance. Some large law firms use periodic questionnaires that ask the partners whether they have acted as a material advisor on any reportable transactions so that the firm can confirm that, if so, all reporting and list maintenance is handled correctly.

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Many firms have tax opinion committees, where independent partners review every opinion before it is issued. This practice may prevent the firm from inadvertently advising on an abusive tax shelter or a reportable transactions altogether. In addition, partner review of tax opinions aids in ensuring that the written advice is compliant with Circular 230 Section 10.37. The Business Law Section of the American Bar Association has published a helpful guide, "Law Office Opinion Practices," which includes suggestions for ensuring that legal opinions, including tax opinions, meet professional standards.[68]

In addition, a firm should consider asking partners and other lawyers or accountants to certify that they are compliant with their own individual tax obligations. It is a violation of Circular 230 to willfully fail to file or to evade or attempt to evade assessment or payment of federal tax.[69] The preamble to the regulations implementing Circular 230 Section 10.36, "Procedures to Ensure Compliance," discussed above, states that while "Treasury and the IRS recognize that personal filing and payment obligations are an individual responsibility," the Treasury and the IRS nonetheless believe that "firm management should not ignore the noncompliance with these obligations by any practitioner associated with the firm when such noncompliance is known or should be known to the firm."[70]

ENDNOTES

1 *Callister Nebeker & McCullough,* DC-UT, 2016-1 USTC ¶50,130, 2015 U.S. Dist. LEXIS 138646 (Oct. 9, 2015).

2 Circular 230, which is contained at 31 CFR §§10.00-10.93, is promulgated under 31 USC §330, governs the practice before the IRS of various taxpayer representatives, including attorneys, accountants and enrolled agents. "Practice" is broadly defined to include "all matters connected with a presentation" to the Service". 31 CFR §10.2(a)(4). "Presentations" include preparing and filing documents, corresponding and communicating with the IRS, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion and representing a client at conferences, hearings and meetings. *Id.*

3 Code Sec. 6112. The terms "material advisor," "reportable transaction" and "tax statements" are defined in Reg. §301.6111-3. The lists must identify each person to whom or for whose benefit the material advisor has made or provided a tax statement, the taxpayers and advisors involved and detailed descriptions of the tax structure and the purported tax treatment of the reportable transaction. Code Sec. 6112(b)(1)(B); Reg. §§301.6112-1(b)(3)(ii) and 301.6112-1(d).

The material advisor must retain the list and related documents for seven years following the earlier of the date on which the material advisor last made a tax statement relating to the transaction or the date the transaction was entered into, if known. Code Sec. 6708(a)(1); Reg. §301.6112-1(e)(1).

4 Code Sec. 6112(b)(1)(B); Reg. §301.6112-1(d).

5 Reg. §301-6111(b)(2)(iii)(A) (" A material advisor generally does not include a person who makes a tax statement solely in the person's capacity as an employee, shareholder, partner, or agent of another person. Any tax statement made by that person will be attributed to that person's employer, corporation, partnership, or principal. However, a person shall be treated as a material advisor if that person forms or avails of an entity with the purpose of avoiding the rules of section 6111 or 6112 or the penalties under section 6707 or 6708.").

6 Reg. §301.6708-1(e).

7 Code Sec. 6708(b).

8 Code Sec. 6708(a)(2).

9 *See id.*

10 *Supra* note 1.

11 Employment Retirement Income Security Act of 1974 (ERISA), 29 USC §§1001-1191c.

12 *Supra* note 1.

13 *Supra* note 1.

14 *Supra* note 1. Callister Nebeker also argued that the $11 million penalty violated the excessive fine clause of the Eighth Amendment to the U.S. Constitution. The court found that this issue required a more developed record. *Id.*

15 Proposed Reg. §§301.6708-1(c) and (g).

16 Proposed Reg. §301.6708-1(g)(3).

17 *Id.*

18 Proposed Reg. §301.6708-1(c)(4) (Example).

19 *Id.*

20 Code Sec. 6707(a) and (b)(1).

21 Code Sec. 6707(b)(2).

22 Code Sec. 6707(b)(2) (flush language).

23 Code Secs. 6707(c) and 6707A(d)(1).

24 Reg. §301.6707-1(e); Rev. Proc. 2007-21, 2007-1 CB 613. These facts and circumstances include whether: (i) the taxpayer or material advisor corrected the failure to disclose the reportable transaction upon becoming aware of such failure; (ii) the failure was due to a reasonable mistake of fact; (iii) the failure was caused by events not under the person's control; (iv) the taxpayer or material advisor has a history of compliance with the reporting and disclosure requirements and other tax laws; (v) the taxpayer or material advisor cooperated with the IRS; and (vi) imposing the penalty would be in equity and good conscience. The IRS will not consider doubt as to collectability or economic hardship. A full list of the factors is contained in the Revenue Procedure.

25 Reg. §301.6707-1(e)(3)(vi).

26 31 CFR §10.36(a).

27 Regulations Governing Practice Before the Internal Revenue Service, 79 FR 33685–92, Preamble.

28 31 CFR §10.36(a).

29 31 CFR §§10.36(b)(1) and (2).

30 31 CFR §10.36(c)(3).

31 Guidance to Practitioners Regarding Professional Obligations Under Treasury Circular No. 230 (Rev. Aug. 2015).

32 The Office of Professional Responsibility (OPR) is the governing body responsible for interpreting and applying Circular 230 and has exclusive responsibility for practitioner conduct and discipline. *See www.irs.gov/Tax-Professionals/Enrolled-Agents/Frequently-Asked-Questions-FAQs.*

33 31 CFR §10.50(c)(1).

34 Notice 2007-39, IRB 2007-20, Apr. 23, 2007.

35 *Id.*

36 *Id.*

37 31 CFR §10.50(c)(2).

38 Jeremiah Coder, *More Talk of Monetary Sanctions from OPR*, TAX ANALYSTS, Nov. 3, 2014.

39 31 CFR §10.24(a).

40 Code Sec. 6694(a)–(b).

41 Reg. §§301.7701-15(b); 1.6694-1(b). An "unreasonable position" is a position (other than a position with respect to a tax shelter) that is not supported by substantial authority or a position that was not adequately disclosed for which there was not a reasonable belief that the position would more likely than not be sustained on its merits. *Id.* For a detailed description of the adequate disclosure procedures, *see* Megan L. Brackney, Tax Controversy Corner, *Everything You Ever Wanted to Know About Adequate Disclosure But Were Afraid to Ask,* J. PASSTHROUGH ENTITIES, Sept.–Oct. 2015, at 41. If a position is with respect to a tax shelter or a reportable transaction, the position is "unreasonable" unless "it is reasonable to believe that the position would more likely than not be sustained on its merits." Code Sec. 6694(a)(2)(C).

42 Reg. §1.6694-1(b)(5).

43 Code Sec. 6694(a)(1).

44 Code Sec. 6694(b).

45 Code Sec. 6694(a)(3); Reg. §1.6694-2(e).

46 Reg. §1.6694-2(e)(4).

47 Code Sec. 6700(a). Code Sec. 6700 requires that the government prove that the promoter was involved in an abusive tax shelter and that he or she knowingly made false statements about the tax benefits investors would receive if they participated in it. *A.B. Stover*, CA-8, 2011-2 USTC ¶50,582, 650 F3d 1099. The government must prove: (i) organization or participation in the sale of certain investment plans or arrangements; (ii) statements by the promoter regarding the allowability of deductions or tax credits, the excludability of income or the securing of other tax benefits; (iii) knowledge or reason to know that the statements are false; and (iv) the statements pertain to a material matter. *Gardner*, 145 TC, No. 6, Dec. 60,392 (August 26, 2015); *W.J. Benson*, CA-7, 2009-1 USTC ¶50,330, 561 F3d 718, 721–722.

48 *Bailey Vaught Robertson & Co.*, DC-TX, 93-2 USTC ¶50,392, 828 FSupp 442, 444.

49 Code Sec. 6700(a).

50 *Id.*

51 *Hargrove & Costanzo*, DC-CA, 2007-1 USTC ¶50,220, 240 FRD 652.

52 *Grant, Konvalinka & Harrison, PC* , DC-TN, 612 FSupp2d 950 (2009).

[53] *Id.*
[54] Code Sec. 6701(a).
[55] *Bailey*, 828 FSupp. at 444.
[56] Code Sec. 6701(b).
[57] *W.T. Kuchan,* DC-IL, 88-1 USTC ¶9377, 679 FSupp 764, 767.
[58] *In re Tax Refund Litigation* , DC-NY, 91-1 USTC ¶50,183, 766 FSupp 1248, *aff'd in relevant part*, CA-2, 93-1 USTC ¶50,173, 989 F2d 1290, 1304–1305.
[59] *In re Tax Refund Litigation* , DC-NY, 91-1 USTC ¶50,183, 766 FSupp 1256-1257.
[60] *Id.* at 1258.
[61] *Id.*
[62] *In re Tax Refund Litigation* , CA-2, 93-1 USTC ¶50,173, 989 F2d at 1304.
[63] *Bailey Vaught Robertson & Co* , DC-TX, 93-2 USTC ¶50,392, 828 FSupp 442.
[64] *Id.*
[65] CCA 200402008 (Dec. 12, 2003).
[66] *www.aicpa.org/InterestAreas/Tax/Resources/StandardsEthics/StatementsonStandardsforTax-Services/DownloadableDocuments/SSTS,%20Effective%20January%201,%202010.pdf.*
[67] *See* Notice 2009-59, IRB 2009-31 (July 15, 2009) (providing list of "listed transactions"); Notice 2009-55, IRB 2009-31 (July 15, 2009) (providing list of "transactions of interest").
[68] *http://apps.americanbar.org/buslaw/tribar/materials/20050406000000.pdf.*
[69] 31 CFR 10.51(a)(6).
[70] Regulations Governing Practice Before the Internal Revenue Service, 79 FR 33685–92.

