

Proposed Treasury Regulation 10.34(e)

Standards with respect to tax returns and documents, affidavits and other papers

(a) Tax returns. A practitioner may not sign a tax return as a preparer unless the practitioner has a reasonable belief that the tax treatment of each position on the return would more likely than not be sustained on its merits (the more likely than not standard), or there is a reasonable basis for each position and each position is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless--

- (1) The practitioner has a reasonable belief that the position satisfies the more likely than not standard; or
- (2) The position has a reasonable basis and is adequately disclosed to the Internal Revenue Service.

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(e) Definitions. For purposes of this section--

- (1) More likely than not. A practitioner is considered to have a reasonable belief that the tax treatment of a position is more likely than not the proper tax treatment if the practitioner analyzes the pertinent facts and authorities, and based on that analysis reasonably concludes, in good faith, that there is a greater than fifty-percent likelihood that the tax treatment will be upheld if the IRS challenges it. The authorities described in 26 CFR 1.6662-4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis.
- (2) Reasonable basis. A position is considered to have a reasonable basis if it is reasonably based on one or more of the authorities described in 26 CFR 1.6662-4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations. Reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The reasonable basis standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.
- (3) Frivolous. A position is frivolous if it is patently improper.

(f) Effective/applicability date. Section 10.34(a) and (e) is applicable for returns filed or advice provided on or after the date that final regulations are published in the Federal Register, but no earlier than January 1, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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Robert Hoyt,

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