# Preparer Penalties: Toughened Standard, Increased Penalties Impact Financial Service Professionals

by Bruce Givner, JD

***Abstract:*** *The newly revised tax return preparer penalties have raised the standard for preparers to "more likely than not," meaning a 51% or more belief that each item on the return is correct. The penalty for failure to meet that standard is (1) the greater of $1,000 or 50% of the fees earned for preparing the return, and (2) automatic referral to the IRS's Office of Professional Responsibility (and a likely suspension of the preparer's license to practice). These tough new standards and harsh new penalties will seldom directly impact a financial service professional because most financial service professionals do not prepare tax returns. However, understanding this new environment offers financial service professionals an opportunity to strengthen their relationships with other members of the estate planning team.*

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## Introduction

The Small Business and Work Opportunity Act of 2007[1] dramatically changed the rules under which tax return preparers must operate. CPAs and lawyers are still attending educational seminars, struggling to learn how to cope with the new rules in practice.[2] Even though most financial service professionals seldom act as return preparers,[3] they must become familiar with the new standards so they can understand the hazards facing their professional colleagues. There will even be situations in which the financial service professional's actions will influence the preparer's decisions and, possibly, the penalty's application.

## Overview

When the modern Internal Revenue Code (Code) was adopted in 1954, the Internal Revenue Service (IRS) had no civil sanctions available to use against a misbehaving tax return preparer. The IRS's only remedy was to try to put a preparer in jail.[4] In 1976,[5] Congress added Internal Revenue Code Sec. 6694[6] to give the IRS a weapon that was easier (than criminal sanctions) to wield. This new section—the original so-called "preparer penalty"—allowed the IRS to fine an "income tax return preparer" $100 if there was (1) an "understatement of liability"[7] on the return and (2) "negligent or intentional disregard of rules and regulations."

Thirteen years later, in 1989, the preparer penalty was changed after extensive study.[8] First, the dollar amount was increased to $250. Second, the standard to be met by the preparer was that the position on the return had to have a "realistic possibility of being sus-

tained on its merits."[9] This was a higher standard than the old "negligent…disregard of rules and regulations." Third, the preparer had two ways to avoid the penalty: (1) if the position taken on the return had a one in three chance of prevailing on the merits,[10] or (2) if the position taken on the return was disclosed to the IRS *and* the support for the position was not frivolous.[11]

## Need for Change?

Another 18 years passed (from 1989 to 2007). One shortcoming in Sec. 6694 became apparent to the IRS: The $250 monetary penalty was an inadequate deterrent. The new law, however, addressed two other concerns. First, the penalty had to apply to preparers of all types of tax returns, not just income tax returns. For example, preparers of estate and gift tax returns, IRS forms 706 and 709, were not covered. Second, the standard to avoid the penalty was too low, allowing too many aggressive positions to appear on tax returns.

## 2007 Changes in the Law

The 2007 Act made four changes. First, the monetary penalty was increased to the greater of $1,000 or 50% of the income earned from preparing the return.[12] Second, the penalty now applies to preparers of all types of returns, e.g., preparers of estate and gift tax returns, not just income tax returns.[13] Third, and most significantly, the preparer must have a "reasonable belief that the position [taken on the return] would more likely than not be sustained on its merits…."[14] This new standard is referred to in the literature by its acronym, as the "MLTN" standard. Fourth, for positions disclosed on the return, the preparer must now have a reasonable basis for the tax treatment to avoid the penalty (the old standard was that the treatment had to be "nonfrivolous").

## Tax Community Was Blindsided

Technically, the new law was Sec. 8246 of the U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (the Act).[15] Given that title, it is not surprising that most of the tax community was unaware of the existence of pending legislation to increase the penalty and toughen the standard. New Sec. 6694 was not the subject of a hearing. Thus, it was not studied by Congress. Even the IRS Chief Counsel commented about the sudden and unexpected change to Sec. 6694, noting that the IRS had been "blindsided."[16]

## What Is "More Likely Than Not"?

A preparer is considered to have a reasonable belief that the tax treatment is MLTN if he or she analyzes the relevant facts and authorities and, based on that analysis, concludes in good faith that there is a 51% or more chance that the treatment will be upheld. The principal authorities to be reviewed[17] are the actions taken by Congress (the Internal Revenue Code, legislative history, and treaties with other countries), IRS (regulations, Revenue Rulings and Revenue Procedures),[18] and federal courts.

## Conflict with Taxpayer's Standard

There is a penalty—usually referred to as the "accuracy-related penalty"—which may be imposed on a taxpayer for certain underpayments of tax.[19] The types of underpayments targeted by this penalty are those caused by:

1. Negligence or disregard of rules or regulations
2. Any substantial understatement of income tax
3. Any substantial valuation misstatement for income tax purposes, e.g., an overstatement of the value of a charitable contribution
4. Any substantial overstatement of pension liabilities
5. Any substantial estate or gift tax valuation understatement[20]

The second of those five types of underpayments—an understatement of income tax—can be reduced[21] if there is *substantial authority* for the treatment, or "relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return" and there is a "reasonable basis" for the tax treatment. The taxpayer can avoid the penalty if there was a reasonable cause for the underpayment and the taxpayer acted in good faith.[22]

The standards mentioned in the preceding paragraph for the taxpayer—reasonable basis, reasonable cause, and substantial authority—are lower than the new MLTN standard for preparers. That means there are situations in which the preparer will be penalized but the taxpayer will not. For example, assume the treatment of

an item is backed by substantial authority, but the authority does not rise to the level of MLTN. The taxpayer would not have to disclose the position to avoid imposition of the accuracy-related penalty. However, the preparer would be subjected to the new Sec. 6694 penalty in the absence of disclosure.

The IRS has helpfully issued interim guidance to address this conflict.[23] As long as the tax treatment has substantial authority (which is less than the preparer's required MLTN standard), the preparer can avoid penalty by providing the taxpayer with the return including the required disclosure. Then, even if the taxpayer removes the disclosure form before filing the return, the preparer is protected.[24] Even easier, the preparer can avoid the penalty merely by explaining to the taxpayer the difference between the penalty standards applicable to taxpayers and preparers and documenting that the advice was provided.[25] However, the IRS's help is temporary.[26] There have been calls for legislation to eliminate the conflict between the taxpayer and preparer standards.[27] Happily, a bill has been introduced to reduce the preparer standard to the taxpayer "substantial authority" standard.[28]

## What Is Disclosure?

For some income tax issues, e.g., medical and dental expenses, disclosure may be made directly on the related income tax return.[29] In other situations, disclosure must be made on Form 8275 or, when the position is contrary to an IRS regulation, Form 8275-R.[30]

## Who Is a Preparer?

A preparer is someone who for compensation prepares all or a substantial portion of a return.[31] However, the definition includes people who do not sign returns.[32] For example, an attorney advising on a client's treatment of a single item on a return may be a nonsigning preparer.[33] The fact that someone can be subject to the preparer penalties without actually signing a return becomes more important once we understand the four categories of documents covered by the IRS's interim guidance.[34]

The first category—the returns listed on Exhibit 1 of IRS Notice 2008-13—include the common returns, e.g., the Form 1040 series for individuals, Form 1041 for trusts, the Form 1120 series for *most* corporations, Forms 706 (federal estate tax returns) and 709 (federal gift tax return), and many employment tax returns, including Forms 940 and 941. There are some odd omissions, like Form 1120-L for life insurance companies.[35]

The second category—the forms listed on Exhibit 2 of IRS Notice 2008-13—do not report a tax liability; they affect an entry or entries on a tax return. If the impact is a substantial portion of the tax return or claim for refund, then the preparer of that form is also a tax return preparer subject to Sec. 6694.[36] These forms include all partnership (Form 1065) and employee benefit plan returns (Form 5500). Form 1120S—the return for an "S" corporation—is listed, without an explanation, on both Exhibit 1 and Exhibit 2. Perhaps the IRS wanted to make certain that preparers of S corporation returns were aware of the new rules.[37]

The third category covers documents—such as depreciation schedules or cost, expense, or income allocation studies—that do not report a tax liability but which will affect an entry or entries on a tax return that does report a tax liability.[38] If that impact is substantial, then the preparer is subject to Sec. 6694. This provision has potentially broad application. Consider:

1. The construction engineer providing a cost segregation study based upon which a taxpayer will use component depreciation for a building
2. The appraiser whose opinion forms the basis for a large charitable deduction
3. The actuary whose opinion provides the basis for a large pension contribution deduction
4. The lawyer whose agreement forms the basis for the allocation of a purchase price to goodwill

The fourth and final category—the documents listed on Exhibit 3 of Notice 2008-13—will not subject a preparer to a Sec. 6694 penalty unless the information on the document is a substantial portion of the return or refund claim and is prepared willfully to understate the liability or with a reckless or intentional disregard of rules or regulations.[39] These documents include all forms in the 1099 and W-2 series: Form 1040-ES (estimated tax for individuals), Form SS-8 (determination of worker status), and Forms 990 and 990-EZ (tax-exempt organization returns).

*Example:* An insurance professional provides the client's CPA with the "insurer's lower published pre-

mium rates that are available to all standard risks for initial issue one-year term insurance" to determine the value of current life insurance protection provided by a tax-qualified employee retirement plan.[40]

Does the insurance professional realize that he or she may be a tax return preparer? Is the insurance professional protected from preparer status because he or she is not providing that advice for compensation? The argument would be that the compensation was earned when the policy was sold; there is no separate compensation for providing the economic benefit information each year.

Is the insurance professional protected from preparer status because he or she believes that the figures provided are more likely than not correct? That should apply; after all, the figures are "objective"—they do not represent the insurance professional's opinion.

Or is the insurance professional protected simply because in most situations the impact on the taxpayer's return is not likely to be "substantial"? In this situation, the information provided by the insurance professional is for Form 1099-R. The 1099 series is in the fourth category of documents—those which do not cause liability unless the information constitutes a substantial portion of the return and are prepared willfully to understate the liability or in reckless or intentional disregard of rules or regulations. Therefore, the insurance professional's chance of liability is extremely remote.

Will common sense prevail in interpreting these types of situations? Or is "sense" uncommon when discussing tax law?

## Will the New Law Achieve Its Goal?

The new standards are designed to reduce the number of positions taken on returns that do not have a greater than 50% chance of winning. However, there are many situations where the authorities are insufficient and the professionals cannot reach that level of comfort, or the proper treatment of an item depends upon an analysis of facts for which no clear majority position can be reached. An example of a factual analysis with which a preparer might find it difficult to achieve an MLTN comfort level is the classification of a service provided as an employee or an independent contractor.

Some people are concerned that the filing of an IRS Form 8275 will trigger an audit. However, suppose each of the 350,000 members of the American Institute of Certified Public Accountants[41] has 100 line items on various clients' returns for which the CPA cannot reach an MLTN level of comfort. Suppose each client authorizes the CPA to attach a form 8275 to the return for each such line item. (Bear in mind that any one return may have multiple 8275s attached to it.) That means the IRS will receive 35 million (350,000 x 100 ) forms to review. Imagine this avalanche of forms at a time when the IRS is struggling to maintain its level of auditing of taxpayers' returns. This brings to mind the last scene in the Indiana Jones film *Raiders of the Lost Ark,* in which the Ark of the Covenant is wheeled into an immense U.S. Government warehouse, never to be heard from again.

## How Might a Financial Service Professional Become Involved?

There are situations in which the financial service professional may encounter the preparer penalty. The following problems are based on actual experiences that have arisen since the May 2007 change in the preparer penalties and illustrate the analysis required.

### IRA Problem

*Example:* Taxpayer has a life insurance policy owned by an irrevocable life insurance trust (ILIT). Taxpayer's liquid assets are managed by Broker. Broker maintains three different accounts for Taxpayer: the family trust, the family limited partnership (FLP), and Taxpayer's $500,000 individual retirement account (IRA). Note that there is no account for the ILIT, as Taxpayer has typically written the checks directly to the carrier for the premiums from Taxpayer's checking account into which he deposits his compensation.[42]

In December 2007, due to Taxpayer's retirement, the premium must be paid from the liquid assets managed by Broker. Broker asks Taxpayer for instructions on which account to use to make the premium payment. Taxpayer is uncertain and tells Broker to ask Insurance Agent. Insurance Agent tells Broker to make the payment from the IRA. Since IRAs cannot be used to pay insurance premiums,[43] the IRA is disqualified, and Taxpayer should report all $500,000 of the IRA as taxable income in 2007.

Broker has an obligation to issue a 1099-R.[44]

Assume Broker fails to do so due to ignorance of the rule (that the IRA's payment of an insurance premium disqualifies the IRA). Broker should not have a problem under the new preparer rules because a 1099 is in the fourth category of forms, i.e. those that do not subject a preparer to a Sec. 6694 penalty unless the information on the document is (1) a substantial portion of the return, which it likely would be in this situation, and (2) prepared willfully to understate the liability or with a reckless or intentional disregard of rules or regulations, which is not the case in this situation. Were this a penalty situation, it would then be important to determine if Insurance Agent is a nonsigning preparer for having given advice on an item that has a significant impact on Taxpayer's return.[45]

### Transfer-for-Value Problem.

Taxpayer owns a $2 million life insurance policy on his own life with a $100,000 surrender value, and he has an FLP in which one of the partners is an irrevocable trust for the benefit of his children (children's trust). As a result of the children's trust's ownership of limited partnership interests, it has built up a large amount of liquid assets—enough to buy the life insurance policy. Taxpayer does not want to give the policy to the children's trust because he has already used up his lifetime transfer tax exclusion.

Insurance Agent arranges for the children's trust to buy the policy from Taxpayer for its appraised fair market value. That same year Taxpayer dies, and the $2 million is paid to the children's trust. The trustee of the children's trust files a tax return—IRS Form 1041—showing the income from the FLP. The IRS audits and asserts that there was a transfer for value,[46] a result of which the $2 million (minus what the children's trust paid for the policy) was taxable income to the children's trust.

The Insurance Agent had assumed, mistakenly, that the children's trust was a grantor trust, which would have qualified for an exemption from the transfer-for-value rules.[47] Is Insurance Agent a nonsigning preparer because he gave advice regarding an item that would have had a substantial impact on the trust's tax return? The answer should be "no," because Insurance Agent did not provide that advice for compensation (Insurance Agent was compensated when the policy was originally sold.)[48]

### Defined-Benefit Plan

Taxpayer's corporation sponsors a defined-benefit pension plan. Insurance Agent helps the defined-benefit pension plan acquire an insurance policy on Taxpayer's life for which Insurance Agent earns a $100,000 commission. Insurance Agent supplies the information about the policy to the actuary. During the course of the underwriting process, the policy changes and Insurance Agent does not provide the updated information to the actuary. As a result, the defined-benefit plan violates the incidental death benefit rule[49] and is disqualified. This requires Taxpayer to include in income the increase in his vested accrued benefit.[50]

Is Insurance Agent a nonsigning preparer of Taxpayer's return (IRS Form 1040)? Is Insurance Agent a nonsigning preparer of the Form 1041, the trust tax return that should now be filed by the taxable pension trust? Is Insurance Agent a nonsigning preparer of the retirement plan's Form 5500? Again, the answer should be "no," because Insurance Agent is not providing advice about the return for compensation. However, because Insurance Agent is being compensated contemporaneously for the sale of the insurance policy, the answer is uncertain.

Imagine the horrible result if Insurance Agent is held to be a nonsigning preparer subject to the penalty, because it is the greater of (a) $1,000 or (b) 50% of the compensation earned in connection with the return. In this case 50% of the compensation would be $50,000. The penalty is nondeductible. So Insurance Agent earned a $100,000 commission, paid $45,000 in state and federal income tax and then paid a $50,000 nondeductible penalty, leaving a net of $5,000.

## Conclusion

The newly revised preparer penalties of IRC Sec. 6694 were not anticipated by the IRS and have created great stress for CPAs and tax lawyers. The need to have a "more likely than not" level of comfort for each line item on tax returns is in conflict with the standard applicable to taxpayers. The IRS has issued interim guidance to allow time to figure out how to live with the new law. In the meantime, financial service professionals should be cognizant of this new mandate and be prepared to help the other members of the planning team with timely, accurate information. Happily, financial service professionals will seldom be subject to the new rules. ■

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(1) Small Business Act, P.L. 110-28.

(2) See, for example, "Coping With the New Return Preparer Standards," ABA-CLE Teleconference, December 5, 2007.

(3) IRC §7701(a)(36) defines "tax return preparer" as follows: "Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or any claim for refund of tax imposed by this title. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund."

(4) IRC §7206, entitled "Fraud and False Statements."

(5) P.L. 94-455, the Tax Reform Act of 1976, Sec. 1203(b)(1), added §6694, effective for documents prepared after 12/31/76.

(6) "Understatement of taxpayer's liability by tax return preparer."

(7) Reg. §1.6694-1(c) provides, in relevant part, that an understatement of liability exists "if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by subtitle A of the Internal Revenue Code, or an overstatement of the net amount creditable or refundable with respect to any tax imposed by subtitle A of the Internal Revenue Code. The net amount payable in a taxable year with respect to the return for which the preparer engaged in conduct proscribed by §6694 is not reduced by any carryback."

(8) "[In 1989], in contrast to the lack of consideration given to making the [2007] change to the §6694 reporting standards, there were 2 years of Congressional hearings and study, several extensive reports by an IRS task force created to study the penalty regime, and meetings and input from various professional organizations. Reporting standards and their implications to the tax system and tax policy are too important to be given no consideration before a change." July 10, 2007, letter from Jeffrey R. Hoops, chair, Tax Executive Committee of the AIPCA, to Chairman Rangel and Ranking Minority Member McCrery of the House Ways and Means Committee and to Chairman Baucus and Ranking Minority Member Grassley of the Senate Finance Committee.

(9) The "realistic possibility of success" standard was based upon American Bar Association Formal Opinion 85-352 which, in turn, influenced Statement No. 1 in the American Institute of Certified Public Accountants July 1988 revised "Statements on Responsibilities in Tax Practice."

(10) Reg. §1.6694-2(b)(1).

(11) A position is usually viewed as not being frivolous if it has a 5-10% chance of prevailing on the merits. Reg. §1.6694-(2)(c)(2): "For purposes of this section, a `frivolous' position with respect to an item is one that is patently improper." The test for frivolity is an objective one, which must be evaluated in terms of the position's legal underpinnings.

(12) The penalty is increased to the greater of (i) $5,000 or (ii) 50% of the income earned from preparation of the return if the preparer's conduct is (a) a willful attempt to understate the liability or (b) a reckless or intentional disregard of rules or regulations. IRC §6694(b)(1).

(13) IRC §7701(a)(36), formerly titled "Income Tax Return Preparer," is now titled "Tax Return Preparer."

(14) IRC §6694(a)(2)(B).

(15) The Act of which these changes was a part indicated that it was "making emergency supplemental appropriations and additional supplemental appropriations for agricultural and other emergency assistance for the fiscal year ending September 30, 2007, and for other purposes." The preparer penalty provisions were in Title VIII, entitled "Fair Minimum Wage and Tax Relief," Subtitle B, entitled "Small Business and Work Opportunity Tax Act of 2007," Part 2, entitled "Revenue Provisions," § 8246, entitled "Understatement of taxpayer liability by return preparers."

(16) The Treasury Department did not recommend this change. In its February 2007 "Blue Book" of recommended legislation, the Treasury only recommended an increase in the penalty's dollar amount. It did not recommend a change in the preparer standards. July 10, 2007, letter from Jeffrey R. Hoops, chair, Tax Executive Committee of the AIPCA to Chairman Rangel and Ranking Minority Member McCrery of the House Ways and Means Committee and to Chairman Baucus and Ranking Minority Member Grassley of the Senate Finance Committee.

(17) Reg. §1.6662-4(d)(3)(iii).

(18) IRS Private Letter Rulings and Technical Advice Memoranda issued after October 31, 1976, and Actions on Decision and General Counsel Memoranda issued after March 12, 1981, and other pronouncements can be considered. Professional treatises, journal articles, and legal opinions are not authority.

(19) IRC §6662, entitled "Imposition of accuracy-related penalty on underpayments." Subsection (a), entitled "Imposition of Penalty," provides: "If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20% of the portion of the underpayment to which this section applies."

(20) IRC §6662(b)(1) through (5).

(21) IRC §6662(d)(2)(B).

(22) IRC §6664(c)(1) "No penalty shall be imposed under §6662 or 6663 with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion."

(23) Notice 2008-13 (January 2, 2008).

(24) Id., ¶G.2.

(25) Id., ¶G.3.

(26) The second paragraph of Notice 2008-13 reads as follows: "In 2008, the Treasury Department and the IRS intend to revise the regulatory scheme governing tax return preparer penalties, which has remained substantially unchanged since the late 1970's. Until then, this notice provides interim guidance on the application of the tax return preparer penalties as amended by the Act."

(27) Raj Pai and Christopher Murphy, "2007 Amendments to Internal

Revenue Code Section 6694 Raise New Issues and Concerns for Taxpayers and Return Preparers," *BNA Daily Tax Report* (October 31, 2007). The final paragraph reads as follows: "A possible solution to this overall issue would be for Congress to change the code so that the return preparer standards mirror the penalty standards for taxpayers. This way, practitioners' interest would be aligned with their clients' interest, and a great deal of conflicts and ethical issues could be remedied."

(28) H.R. 4318. introduced on December 6, 2007 by U.S. Rep. Joseph Crowley (D-NY).

(29) Rev. Proc. 2008-14.

(30) Reg. 1.6694-2(c)(3)(i).

(31) IRC §7701(a)(36).

(32) Treas. Reg. §1.6694-1(b)(2), entitled "Signing and non-signing preparers," reads as follows: "A `signing preparer' is any preparer who signs a return of tax or claim for refund as a preparer. A `non-signing preparer' is any preparer who is not a signing preparer. Examples of non-signing preparers are preparers who provide advice (written or oral) to a taxpayer or to a preparer who is not associated with the same firm as the preparer who provides the advice."

(33) Treas. Reg. §1.6694-1(b)(3): "*Example.* Attorney A provides advice to Client C concerning the proper treatment of a significant item on C's income tax return. The advice constitutes preparation of a substantial portion of the return. In preparation for providing that advice, A discusses the matter with Attorney B, who is associated with the same firm as A, but A is the attorney with overall supervisory responsibility for the advice. Neither Attorney A nor any other attorney associated with A's firm signs C's return as a preparer. For purposes of the regulations under §6694, A is a preparer with respect to C's return and is subject to penalty under §6694 with respect to C's return. B is not a preparer with respect to C's return and, therefore, is not subject to penalty under §6694 with respect to a position taken on C's return. This would be true even if B recommends that A advise C to take an undisclosed position that did not satisfy the realistic possibility standard. In addition, since B is not a preparer for purposes of the regulations under §6694, A may not avoid a penalty under §6694 with respect to C's return by claiming he relied on the advice of B. See §1.6694-2(d)(5)."

(34) Notice 2008-13 (January 2, 2008).

(35) An 1120-F, return of a foreign corporation is included, but not an 1120-F SC, the return of a foreign sales corporation. Why the distinction? Also omitted are returns 1120-H (homeowner associations), 1120-PC (property and casualty company), 1120-POL (certain political organizations), 1120-REIT (real estate investment trusts), 1120-RIC (regulated investment companies), and the ever popular 1120-ND (nuclear decommissioning funds).

(36) Notice 2008-13 (January 2, 2008), ¶A.2.a.

(37) Richard M. Lipton, "Preparer Penalties: The Service's `Interim' Response to the 6694 Amendments," 108 *Journal of Taxation,* 79.

(38) Notice 2008-13 (January 2, 2008), ¶A.2.b.

(39) Notice 2008-13 (January 2, 2008), ¶A.2.c.

(40) Notice 2002-8, ¶III.3.

(41) http://www.aicpa.org/MediaCenter/FAQs.htm#aicpa_answer6.

(42) *Headrick Est. v. Comr.,* 93 T.C. 171 (1989), *aff'd,* 918 F. 2d 1263 (6th Cir. 1990) *acq.* recommended, AOD 1991–012.

(43) Internal Revenue Code §408(a)(3).

(44) "Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."

(45) Whether or not Taxpayer has a cause of action against Insurance Agent for malpractice is beyond the scope of this article.

(46) IRC §101(a)(2).

(47) Rev. Rul. 85-13; PLR 200514001.

(48) Again, whether or not Taxpayer has a cause of action against Insurance Agent for malpractice is beyond the scope of this article.

(49) Rev. Rul. 74-307. In this particular case (an actual fact situation), the death benefit exceeded 100 times the taxpayer's monthly compensation.

(50) Treas. Reg. §1.402(b)-1(b)(1): "In General. If rights of an employee under a trust become substantially vested during a taxable year of the employee (ending after August 1, 1969), and a taxable year of the trust for which it is not exempt under §501(a) ends with or within such year, the value of the employee's interest in the trust on the date of such change shall be included in his gross income for such taxable year, to the extent provided in paragraph (b)(3) of this section. When an employee's trust that was exempt under §501(a) ceases to be so exempt, an employee shall include in his gross income only amounts contributed to the trust during a taxable year of the employer that ends within or with a taxable year of the trust in which it is not so exempt (to the same extent as if the trust had not been so exempt in all prior taxable years)."