DUE DILIGENCE AND PREPARER PENALTIES FOLLOWING TJCA: EXPANDED AND POTENTIALLY EXPENSIVE

PREPARED FOR:

2020 Midyear Tax Meeting
American Bar Association, Tax Section
January 31, 2020- Boca Raton, FL

PREPARED BY:

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Mr. Lampert was born in Philadelphia, Pennsylvania and attended the University of Miami (A.B., cum laude, 1979); Tel Aviv Faculty of Law, Joint program with Temple University School of Law, Ramat Aviv, Israel, 1981; Duke University, (J.D., 1983); New York University, (LL.M. in Taxation, 1984). He was admitted to the Florida Bar in 1983, the Bars of Pennsylvania, the District of Columbia and the U.S. Tax Court in 1984, to the U.S. Court of Appeals for the Armed Forces in 1995 and the U.S. District Court for the Southern District of Florida in 2000. Mr. Lampert is a member of the Taxation, Real Property, Probate and Trust Law, and Elder Law sections of the Florida Bar and both the National and Florida Associations of Elder Law Attorneys, as well as the South Florida Tax Litigation Association. He is a past Chair of the Florida Bar Tax Section and has served as a Director of its Education, Administration and Long Range Planning Divisions. He received the 1993 Tax Law Award from The Legal Aid Society of Palm Beach County and The Palm Beach County Bar Association. He is listed in Who's Who in America, Who's Who in American Law, and selected as a Super Lawyer in Florida Super Lawyers. He is also a Fellow of the American College of Tax Counsel. He currently serves on the Tax Law Certification Committee of the Florida Bar Board of Legal Specialization and Education. He was also elected to membership in the Gulf Coast Tax Exempt Government Entities Council.

Mr. Lampert frequently lectures before both professional and community organizations, including such organizations as The Florida Bar, the Palm Beach County Tax Institute (past President), various Chapters of the Florida Institute of Certified Public Accountants, the Palm Beach-Martin County Estate Planning Council, the Palm Beach County Bar Association, Hunter College, the University of Florida School of Law Graduate Program in Taxation, the University of Miami School of Law Graduate Program in Taxation and the Tax Section of the American Bar Association. He also served for many years as an Instructor in the Continuing Education Division of Florida Atlantic University and on the editorial board of the CCH Publication Sales and Use Tax Alert. He is also past Chairman of the Palm Beaches - Treasure Coast Region, Palm Beach Chapter of the American Red Cross. He currently serves as President of the Jewish Family & Children's Service of Palm Beach County and the Jewish Residential & Family Service.
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I. Tax Preparer Penalties Generally

Tax preparers are subject to a myriad of penalties and other sanctions. Penalties tend to fall into two categories, general penalties and penalties for failure to follow certain expanded due diligence requirements, particularly as they relate to certain credits. It is important to be alert to the possible assertion of additional penalties and other remedies.

26 U.S.C. § 6694 penalizes a tax return preparer who prepares a return that contains an understatement of tax liability or an overstatement of a refund due to an unreasonable position that the return preparer knew or should have known as unreasonable.

A. IRC § 6694 - Understatement of taxpayer’s liability by tax return preparer.

1. Understatement due to unreasonable positions

a. In general If a tax return preparer—

(i) prepares any return or claim of refund with respect to which any part of an understatement of liability is due to a position described in paragraph (2), and

(ii) knew (or reasonably should have known) of the position, such tax return preparer shall pay a penalty with respect to each
such return or claim in an amount equal to the greater of $1,000 or 50 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

b. Unreasonable position

(i) In general. Except as otherwise provided in this paragraph, a position is described in this paragraph unless there is or was substantial authority for the position.

(ii) Disclosed positions. If the position was disclosed as provided in section 6662(d)(2)(B)(ii)(I) and is not a position to which subparagraph (C) applies, the position is described in this paragraph unless there is a reasonable basis for the position.

(iii) Tax shelters and reportable transactions. If the position is with respect to a tax shelter (as defined in section 6662(d)(2)(C)(ii)) or a reportable transaction to which section 6662A applies, the position is described in this paragraph unless it is reasonable to believe that the position would more likely than not be sustained on its merits.

c. Reasonable cause exception. No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement and the tax return preparer acted in good faith.

2. Understatement due to willful or reckless conduct

a. In general. Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a conduct described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of—

(i) $5,000, or

(ii) 75 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

b. Willful or reckless conduct. Conduct described in this paragraph is conduct by the tax return preparer which is—

(A) a willful attempt in any manner to understate the liability for tax on the return or claim, or
(B) a reckless or intentional disregard of rules or regulations.

c. Reduction in penalty. The amount of any penalty payable by any person by reason of this subsection for any return or claim for refund shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).

Practice Tip: This is one example where penalties do not “stack”! When dealing with multiple penalties, check to see if only one is permitted to apply or if there is a “cap” on the total permissible penalty.

B. 26 U.S.C. § 6695 - Other assessable penalties with respect to the preparation of tax returns for other persons.

1. Failure to furnish copy to taxpayer

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(a) with respect to such return or claim shall pay a penalty of $50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000.

2. Failure to sign return

Any person who is a tax return preparer with respect to any return or claim for refund, who is required by regulations prescribed by the Secretary to sign such return or claim, and who fails to comply with such regulations with respect to such return or claim shall pay a penalty of $50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall not exceed $25,000.

3. Failure to furnish identifying number

Any person who is a tax return preparer with respect to any return or claim for refund and who fails to comply with section 6109(a)(4) with respect to such return or claim shall pay a penalty of $50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to documents filed during any calendar year shall
not exceed $25,000.

4. Failure to retain copy or list

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with section 6107(b) with respect to such return or claim shall pay a penalty of $50 for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed $25,000.

5. Failure to file correct information returns

Any person required to make a return under section 6060 who fails to comply with the requirements of such section shall pay a penalty of $50 for:

a. each failure to file a return as required under such section, and

b. each failure to set forth an item in the return as required under section, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection on any person with respect to any return period shall not exceed $25,000.

6. Negotiation of check

Any person who is a tax return preparer who endorses or otherwise negotiates (directly or through an agent) any check made in respect of the taxes imposed by this title which is issued to a taxpayer (other than the tax return preparer) shall pay a penalty of $500 with respect to each such check. The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer.

7. Failure to be Diligent in Determining eligibility for child tax credit; American Opportunity Tax credit; and Earned income Credit

Any person who is a tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining eligibility for, or the amount of, the credit allowable by section 24, 25A(a)(1), or 32 shall
pay a penalty of $500 for each such failure.

C. Under IRC § 6696(a), the penalties provided by §§6694 and 6695 are in addition to any other penalties provided by law.

Practice Tip: When handling tax preparer penalty cases always consider risk of referral to the Office of Professional Responsibility (OPR) for enrolled preparers (Attorneys, CPAs, and EAs).

Note: Some penalties are inflation indexed.


In addition to the monetary penalties explained above, section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from engaging in certain prohibited conduct or from further acting as a tax return preparer. The prohibited conduct justifying an injunction includes the following:

1. The tax return preparer has engaged in any conduct subject to penalty under §6694 or 6695, or subject to any criminal penalty provided by this title,

2. The tax return preparer has misrepresented his eligibility to practice before the IRS, or otherwise misrepresented his experience or education as a tax return preparer,

3. The tax return preparer has guaranteed the payment of any tax refund or the allowance of any tax credit, or

4. The tax return preparer has engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws.

If the court finds that the tax return preparer has engaged in any of the above conduct and determines that injunctive relief is appropriate to prevent the recurrence of such conduct, under §7407(b)(2) the court may enjoin such person from further engaging in such conduct. If the court finds that a tax return preparer has continually or repeatedly engaged in any conduct listed above and that an injunction prohibiting such conduct would not be sufficient to prevent such person’s interference with the proper administration of this title, the court may enjoin such person from acting as a tax return preparer.

The PATH Act expanded the preparer due diligence penalties under IRC Sec. 6695(g) to include the (1) child tax credit, (2) additional child tax credit, and (3) American Opportunity Tax Credit. Previously, the penalty applied only to the earned income tax credit. For 2016 returns (when laws changed), preparers were subject to a $510 penalty for any tax return or refund claim for which they didn’t properly determine the individual’s eligibility and correct credit amount (Inflation indexed penalty). The TCJA (December 22, 2017) added head of household to the list. Preparers must use Form 8867 (Paid Preparer’s Due Diligence Checklist) to certify that they have confirmed their clients’ eligibility for these credits. The expanded penalty rules apply for tax years beginning after 2015.

II. Introduction- The World of the Tax Preparer

In looking at preparer penalty cases, particularly the ones dealing with enhanced due diligence requirements, I see a broad spectrum of preparer clients. Likewise, I see a broad spectrum of how the Service deals with preparer penalty cases.

Some of these preparers need to go to jail, others made some errors, and some tried to (improperly) help their clients get a larger refund. Yet others steal all or part of the refund and perhaps commit identity theft. Some preparers are simply incompetent, some use the “everyone does it” set of rules and some are not in compliance with their own tax return filings.

While I have had to defend CPAs and other “enrolled” preparers from various penalties, they tend not to be the enhanced due diligence penalties under IRC § 6695(g). I believe this is for at least three reasons. First, the education levels of CPAs and EAs are simply higher. Second, there is a penalty exception if the error was essentially an aberration of the preparer’s office procedures reasonably designed and routinely followed to ensure compliance. It is much harder to make that argument when faced with proposed penalties on forty returns. Third, enrolled preparers are under the radar. The typical CPA and, to some extent the typical Enrolled Agent, have fewer low income clients where the enhanced due diligence requirements arise. And, therefore, they are under the Service’s radar in many cases. I have found many CPAs not following due diligence requirements while addressing tax controversy cases for taxpayers, yet the number of their “violations” is a small percentage of the overall returns they prepared.

In short, most of these enhanced due diligence preparer penalty cases are with non-enrolled preparers. The Service pursues enrolled preparers also, of course, but I do not see the EITC and other refundable related cases as much with enrolled preparers. For enrolled preparers, the preparer penalty usually involves something else.

Many of these unenrolled preparers do not really understand the tax law. And the knowledge of those who have a clue is still limited. With that said, however, many game the system, asking questions of taxpayers to lead to desired answers. Some preparers just make stuff up. They do not even lead the taxpayer client to say the made up stuff. At the same time it is clear to me that many of the preparer’s clients know what was going on. And the taxpayers will
shop till they get the best “return” (what the taxpayers’ call the refund). Sometimes a return will be prepared, the taxpayer will say “let me think about it” and will then go somewhere else and see if they can do better. Some preparers feel that if the taxpayer tells them something and signs that it is accurate they are good to go, even if the preparer lead the taxpayer to answer in a certain way.

The competition for clients between unenrolled preparers can be intense, particularly within certain ethnic and recent immigrant communities. And these unenrolled preparers tend to market for lower income clients, unlike most CPAs and EAs.

Some preparers charge reasonable or even low fees. I have one case right now where the typical charge is $120 per return. Yet some charge based in significant part on how large the refund is. How much due diligence is reasonable to impose on a preparer earning $120?

Some preparers are what I call dishonest. Not simply preparing, intentionally or through incompetence, bad returns. But instead steal refunds, do ID theft, or are very evasive about what the real fee is. The refund anticipation loans that some preparer’s offer exacerbate this, in my opinion.

I have discovered no rhyme nor reason why some cases get massive penalty proposals, some get civil injunction, and some go criminal. I have spoken with Special Agents, Department of Justice lawyers, Revenue Agents and even chatted at liaison meetings (I recently spoke at a CPA liaison meeting with the Service where I was on a panel on one procedure topic and I asked some of the other Government people...got nothing of value to what goes where.) The best I seem to be able to surmise is that it somewhat depends on how the case starts. If someone makes a criminal complaint that the preparer stole something, such as a refund, it might start in criminal and stay there unless released.

III. The “Audit”

The Service tends to show up at the tax preparer’s office unannounced. Sometimes, they are there for an educational visit, yet it can be hard for the preparer to know or trust the difference between an educational visit and an audit visit. The Service also sends letters (see sample in the exhibits). More recently they may contact the preparer for a close in date appointment. The Service comes in and asks for a number of files. I generally find they request twenty five then twenty five more. It is not uncommon more recently for the auditor to come in twos rather than just one. Not sure if that is more for training, protection, or so there are witnesses. (I know the rule of thumb of when they come in twos think criminal, but two RAs will show up and not just for the manager’s review.)

What often happens during these visits is that the preparer has a mix of records, some on the computer and some in a paper file. Some records are in prior years files. In one case the preparer would have some of the copies of back up in a stack by the printer, where the records
may sit until they have some breathing room to put into the specific file. Made no sense but I was told that by a preparer client with a straight face.

I find that in some cases the RA will look at the paper file, ask for a printout of the return and diligence statement and that is it. The RA writes up the case never seeing what is in the computer file.

Perhaps worse, the RA will insist, and cite bad law in the report, that all of the information has to be in the contemporaneous file. So if, as is very often the case, the taxpayer is a repeat client of the preparer, a copy of a birth certificate and other back up is not in the current year’s file. RAs regularly argue and put in the report that each year stands alone. But that simply is not the case. The Regulation violation examples specifically say that, for example, if you established an e.g. dependent child in one year you do not have to again establish that the child is your child in the next year.

The RA then writes up the case. I am finding more recently they are writing up with more detail. And asserting multiple penalties per return prepared, leading to tens of thousands of dollars in penalties. Unfortunately, some of the reports are based on bad law, such as above. In addition, they are asking for detail and back up that simply is not required. Often, when all else fails, the RA just alleges that the preparer failed the knowledge test for not asking enough questions of the taxpayer.

They also insist that the preparer should have asked questions of items that the RA thinks are red flags.

For example:

A. How can the taxpayer live on the 10K reported income? Of course there is a Medicaid card in the file which should give the RA some idea of the income of the taxpayer. The RA will then allege the card was illegible.

B. Many of the low income taxpayer clients of the preparer are working off the books. Maybe some job gave them a 1099, some a W2 and much is cash. And some of the 1099s or W2s they receive are from others in the same ethnic community or family (more on that later). So here a taxpayer reports income and it is questioned. And then there are no deductions. In some cases it is because there are no deductions. The reality is, the worker probably should have been treated as an employee. The RA then questions why there are no deductions on Schedule C. I have had preparers say, “they could not give me any back up for deductions so I did not put any on the return.” The RA says that is also suspect. Yet if that same RA did an income tax audit of the underlying return, what result?

Remember also that many of these clients of the preparer are either unbanked or
minimally banked. They have little to no records and are scraping by. On a good day. Some are living three families in a house in Lake Worth (meaning nothing to you, but might to someone in Palm Beach County, Florida) in ethnic communities where the city has not yet caught the zoning violation or does not want to fight it because of the loose definition of a family.

Even understanding what people do for a living and how they describe what they do can be challenging. In one recent file I see that the RA noted that the taxpayer was listed as a farmworker on the tax return yet the W2/1099 (I do not remember which) said that it was from a nursery. The RA did not understand that a nursery is not the daycare center that the RA may have sent the child to but rather a type of farm. In another case, the RA said that one of the items of proof in the preparer’s file was a note from a “baby doctor”. What the RA didn’t realize was that the very item they were looking at was the vaccination records from the pediatrician.

C. The RAs also question dependents despite some proof. Why are so many of the preparer’s clients claiming nieces, nephews, and others who are not their children? Perhaps, it is because the family in Haiti sent the child to the U.S. for hopefully a better life and education. How much inquiry or interrogation is needed by the preparer? Would the RA be asking the same questions if there were not low income, multi-cultural issues? How many file notes does the preparer need to keep? I am not suggesting intentional bias, instead it is systemic in many ways and perhaps it is not realized. And the preparers in this low income market who actually try to do a good job are tainted by numerous bad preparers. So I truly understand the Service’s concerns.

Sometimes the Service will pull the preparer’s client’s returns and do inquiries to those clients. This leads to many questions to the preparer. It is not uncommon for the Service to do this in February or March of the next year, such that the preparer is trying to help the clients with old years to address the Service’s inquiries, as well as try to deal with the current year’s tax returns that are due. It can seriously hamper the ability of the preparer to work. What is interesting about this is I see the Service using these preparer’s client’s returns in injunction and criminal cases. Yet I do not see them formally using them in the preparer penalty cases. As an example, with a current preparer case I am handling the preparer reports that over the last several years every single case but one where the Service has asked the taxpayer for more information, it has been provided and that was the end of it. And there was some reason for the one outlier. Yet it is hard to argue in Appeals that the Service should show us that there really were bad returns. In trust fund cases you can get information on other responsible parties. What if you could get audit information on any returns the preparer prepared to be used in defending a preparer case?
IV. The Appeal

Then it goes to Appeals. Numerous challenges. The first is to remind Appeals that the burden is on the government. (Have not seen one yet that was not signed off by a RA manager so the lack of supervisor approval argument usually does not help).

Rarely is there much in the Appeals file. Lately I find the RAs descriptions are more developed. The problem is as you provide more back up Appeals actually says or infers that the back up is given less wight or none as it was (allegedly) obtained after the audit and needed to have been obtained contemporaneously to the return filing and available for the audit. I had one case where the audit and the appeal filing dates were very close and I was able to represent to the Appeal’s Officer when I actually received the back up from the preparer. That it would have been difficult if not impossible to have gathered that much new back up from the preparer’s clients. Do I think that help? Yes. But help as much as I think it should have? No. In short, the RAs do not look at everything and do not look at prior years. They write up a case and you then have to convince appeals that the preparer had the information available.

It has been my experience that Appeals does not want to take the time to analyze what is often forty plus files. Each with multiple penalties. By rights the preparer is entitled to have every single file carefully reviewed for the applicability of each specific penalty. But good luck having an Appeals Officer do such a careful review. I find that I try to knock out some by showing the RA was flat wrong (including that the preparer did not actually do a specific return if applicable). Then try to show enough so that a good percentage reduction can be negotiated. Which is often still insurmountable for the preparer to pay.

V. Burden of Proof and Burden of Persuasion

In most civil tax controversy cases the taxpayer bears the burden of proof. This has two parts. The burden of persuasion and a predicate burden of production. However, the burden of production is a fairly minimal burden to show the court that the Service has some minimal reasonable basis for asserting the penalty. Once the Service makes that minimal reasonable showing, the taxpayer bears the burden of persuading the court that the penalty should not be imposed.

(There is one exception to the foregoing, where the penalty is a fraud penalty (fraudulent return or fraudulent failure to file), both of which are civil fraud penalties. The Service bears the burden of establishing the fraud predicate to those penalties by clear and convincing evidence. Since it bears the burden of persuasion on that issue, it necessarily bears the burden of production.)

As noted in Effectively Representing Your Client Before The IRS, Volume 2, 6th Edition, Section 14.2.2.2)
- Under IRC 7491(c) the Service “has the burden of production in any court proceeding with respect to the taxpayer’s liability for a penalty.”

- To meet this burden, the Service must come forward with specific evidence supporting the application of a particular penalty to the taxpayer. If the Service sustains its burden, the taxpayer has the burden to come forward with evidence of defenses to the penalty (i.e., reasonable cause, substantial authority, reasonable reliance on a professional advisor, etc.).

- If the Service fails to meet its burden of production, the penalty will be denied.

Practice Tip: IRC Section 7491 does not affect the taxpayer’s burden during administrative proceedings before the Service. However, it is safe to assume that once the matter is before the Appeals Division, the Service’s new burden of production might be considered a possible “hazard of litigation.” While you can use this as a sword in negotiations, it does not relieve you of the obligation to be thoroughly prepared to discuss and defend the penalty during the Appeals conference(s). Do not wait until trial to address the issue.

VI. Penalty Exception

The Section 6695 (g) penalty will not be applied if the preparer can demonstrate to the satisfaction of the Service that, considering all the facts and circumstances, the preparer’s normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of Form 3115. Reg. § 1.6695-2(b) and that any failure was isolated and inadvertent.

VII. Settled? Other Ramifications

It is not clear if the penalties are divisible like trust fund taxes. Because each penalty, in theory, should stand alone. Can you pay one penalty, or one of each type and apply for refund and then sue and let it be effective for all? The law is not clear but is leaning toward no.

Practice Tip: When the final assessment penalty is made, notice and demand is made to the preparer. The preparer may, of course, pay and may ask for a refund within three years of print date. While for many preparer penalty cases the preparer can also pay at least 15 % of the entire amount assessed for each tax return and request a refund, this does not apply for the enhanced due diligence 6695(g) penalties. Form 6118, Claim for Refund of Income Tax Return Preparer Penalties is used in both cases.

I also get uncomfortable in some cases agreeing to penalties as it can impact the preparer in the future if they are examined again, as frequently happens. It can also impact on their PTIN and EFIN numbers and result in non-renewal or revocation of their number.
Where is the return preparer’s office in all of this? Enrolled preparers are, of course, also subject to Office of Professional Responsibility sanctions.

VIII. Audit & Appeal Practice Tips

Practice Tip: Always look at the preparer’s own income tax returns, if any (business and personal). The Service often uses the number of returns prepared to estimate income. In addition, the Service will sometimes cause an income tax audit of the tax preparer while imposing preparer penalties.

Practice Tip: The auditor in a tax preparer case will often give little to no time for the preparer to organize records. The auditor will walk in, demand to see records in the middle of tax season, and impose penalties on what the preparer was able to quickly provide. If possible, try to manage the records demand time frame. Unfortunately, the preparer often comes to the attorney after the initial “audit”.

Practice Tip: It is not uncommon in a busy tax preparer business, particularly one with multiple offices, to have returns mistakenly filed under a preparer’s number even though that preparer had nothing to do with preparing those returns. Because many of the preparer penalties, such as EITC, are imposed per return, analysis of each return and who prepared it should be made.

Practice Tip: In some cases the Service will propose/assess various preparer penalties. In addition, the case is referred to the Department of Justice Tax Division to file suit for an injunction to prevent the tax preparer from preparing returns in the future. As part of the settlement negotiations the Department of Justice may agree to a significantly reduced preparer penalty and to impose no additional tax return preparer penalties for specific tax years.

Practice Tip: It is important to be clear on the tax year being addressed with the penalty. For example, it is very common to refer to 2018 returns when what is really being addressed are tax year 2017 returns being prepared in 2018.

Practice Tip: Is the proposed penalty assessment within the three year assessment period (from the date of filing of underlying return) CCA201514008?

IX. Congress’s Fault?

And much of this is Congress’s fault. They are trying to solve a social problem with lower income people through the tax system via refundable credits. Somewhat like the minimum
income proposal but done in a more technical way with less coverage. So you have people
gaming the system. And also the low income people who are trying to use the EITC and related
laws as intended getting bashed now for being poor and taking advantage of the law. And then
tax preparers who primarily deal with a lower income client base getting targeted because of the
bad practitioners as well as the large percentage of tax returns they prepared with refundable
credits. While a tax preparer with a middle to upper income client base may have some EITC
and other credits on the prepared returns, it is not the norm and they are not as likely to be
targeted for a preparer audit. Of course some of the creativity that those preparers exhibit on the
returns, as well as sometimes repeated incompetence, is rarely addressed.

X. Ten Deadly Sins

While not usually applicable for the purposes of penalty cases, reference is made to the
Revenue Reform Act of 1998 and what are often referred to as The Ten Deadly Sins. This list
consists of 10 items of misconduct that will result in termination from employment if perpetrated
by a Service employee. While most of the items in the 10 Deadly sins do not directly apply to
penalty cases, “deadly sin” number 6 (“Violating the IRC, Department of Treasury regulations, or
policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating against,
or harassing, a taxpayer, taxpayer representative, or other employee of the IRS”) is the most
likely to arise. Sometimes IRS employees threaten the tax preparer with penalties or sometimes
try to settle with a taxpayer by getting him or her to return on the preparer. It is worthwhile being aware
of this provision in the, hopefully, very rare occurrence, that this does arise. Source:

XI. Lampert’s Tips For Dealing With Penalties (in no particular order)

1. Read the requirements (code and regulations) for penalty imposition.
   • Did the taxpayer or preparer do it?
   • What general exceptions apply?

2. What does the IRM say?

3. Where is the burden of proof and burden of production?

4. If multiple penalties/periods - is the penalty divisible?
5. If the penalty is based on underlying income tax, can the underlying tax be reduced?

6. If the underlying tax can be reduced enough, will the penalty still apply (e.g. substantial understatement)?

7. If the underlying tax can be reduced, has the statute of limitations expired on assessment (e.g. eliminating substantial understatement of tax penalty. Due to less tax due, can change the statute on assessment from six years to three)?

8. Does “first time” abatement apply?

9. Are penalties being improperly stacked?

10. Does the reasonable cause exception apply? See IRM Section 20 for the nine main reasonable cause arguments.
    - Death, Serious Illness, Unavoidable Absence
    - Fire, Casualty, Natural Disaster
    - Unable to Obtain Records
    - Mistake was made
    - Erroneous Advice or Reliance
    - Written/Oral Advice from the IRS
    - Ignorance of Tax Laws
    - Reasonable Cause/Ordinary Business Care and Prudence
    - Undue Economic Hardship

11. If reasonable cause arguments may apply, will arguing it interfere with attorney/client-tax preparer/client privilege?

12. Is it a Title 26 or Title 31 penalty?
    - Who collects the penalty and how?
13. Is it a penalty or an excise tax?

14. Is the penalty dischargeable in bankruptcy? Does it need to be fought to aid in obtaining a bankruptcy discharge in the future?

15. Will the penalty interfere with obtaining an offer in compromise doubt as to collectability?

16. When do you fight the penalty? Address it at audit/collection level or wait for appeal? Are some better argued as part of a collection due process appeal if no prior opportunities to challenge?
   - Is the argument purely legal based on interpretation of already provided facts, or based on additional facts?

17. Is the amount of underlying tax so high that even if you prevail on the penalty it will not matter?

18. Always consider criminal potential.
   - Will fighting the penalty open additional issues?
   - Will fighting the penalty “encourage” the taxpayer to commit perjury or knowingly make a false statement to the Government?

19. Will fighting the penalty open up additional, non criminal, issues?
   - Such as practice issues before the Service or other governmental, quasi-governmental, or private agencies.

20. Will the penalty effect other issues, such as state tax issues, divorce proceedings, licenses, etc.?
APPENDIX

#1- Letter 5025: Regarding Possibly Not Meeting Preparer Due Diligence Requirements

#2- Form 6118: Claim for Refund of Tax Return Preparer and Promoter Penalties

#3- Letter 1125: Return Preparer Examination Letter

#4- Form 5816: Report of Tax Return Preparer Penalty Case with Exhibits
Dear [Name]:

Why we're sending you this letter
A review of the [2018] returns you prepared shows you may not have met your due diligence requirements and may have prepared inaccurate returns for your clients, claiming at least one of the following:

- Earned Income Tax Credit (EITC)
- Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependents (ODC)
- American Opportunity Tax Credit (AOTC)
- Head of Household (HoH) filing status

This letter is to give you information and make you aware of the due diligence requirements that all paid preparers must follow. If you do not prepare accurate returns and comply with due diligence requirements under Internal Revenue Code Sections 6695(g) and 1.6695-2(b) of the Income Tax Regulations, you may be penalized. The penalty is $[530] per failure for tax returns filed in [2020]. The failure to exercise due diligence can also result in an audit, the suspension or termination of your e-filing privileges, or a referral to the IRS Criminal Investigation Division. We may also audit your clients which could prevent them from claiming the credits for a period of time in the future.

We can't supply information specific to the questionable returns, however, we found the following issues:

What you need to do
Meet all four due diligence requirements

- Complete and send Form 8867, Paid Preparer's Due Diligence Checklist, with every return you prepare which claims any of the benefits listed above.
- Complete all worksheets, or equivalents, showing how you computed the credits claimed on a return or amended return.
- Question the client if any information seems incorrect, inconsistent, or incomplete. Document your questions and the client's responses.
- Keep all required records, including copies of any documents you relied on to determine eligibility for the benefits listed above and to compute the amount of the credits.

What happens next
This letter is for your information only. You don't need to respond. We'll continue to check future returns you prepare that claim these benefits to ensure you're meeting your due diligence requirements.
Where you can find more information
- Publication 4687, Paid Preparer Due Diligence, available on our website at www.irs.gov/forms-pubs
- The preparer toolkit on our website at www.eitr.irs.gov/tax-preparer-toolkit/main
- Visite www.eitr.irs.gov e ingrese las palabras claves "Letter 5025(SP)" para leer esta carta en español

You can get any of the forms or publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact us at the phone number or email address on the first page of this letter. For security purposes, don't include any personally identifiable information (PII) belonging to your clients. PII includes information used to distinguish or trace the identity of an individual.

Sincerely,

Gwen M. Garren
Gwen M. Garren
Director,
Refundable Credits Program Management
Claim for Refund of Tax Return Preparer and Promoter Penalties

For Penalties Assessed Under IRC Sections 6694, 6695, 6700, and 6701.

Go to www.irs.gov/Form6118 for the latest information.

Name of preparer or promoter

Address to which statement(s) of notice and demand were mailed

City, town or post office, state, and ZIP code

Address of preparer shown on return(s) for which penalties were assessed (if different from above)

Identifying number

See instructions.

IRS office that sent statement(s)

Type of Penalty. Enter letter in column (c) below.

A. Understatements due to unreasonable positions—section 6694(a)
B. Willful or reckless conduct (intentional disregard of rules and regulations)—section 6694(b)
C. Failure to furnish copy of return or claim for refund to taxpayer—section 6695(a)
D. Failure to sign return or claim for refund—section 6695(b)
E. Failure to furnish identifying number—section 6695(c)
F. Failure to retain copy or list—section 6695(d)
G. Failure to file a record of return preparers—section 6695(e)(1)
H. Failure to include an item in the required record of return preparers—section 6695(e)(2)
I. Negotiation of check—section 6695(f)
J. Failure to exercise due diligence in determining eligibility for and the amount of certain tax credits and/or eligibility to file as head of household—section 6695(g)
K. Promoting abusive tax shelters, etc.—section 6700
L. Aiding and abetting understatement of tax liability—section 6701
M. Other (specify) (see instructions)

Identification of Penalties. Enter the information from your statement.

<table>
<thead>
<tr>
<th></th>
<th>(a) Statement document locator number (CDLN)</th>
<th>(b) Date of statement</th>
<th>(c) Type of penalty</th>
<th>(d) Name(s) of taxpayer(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>2</td>
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<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>(e) Taxpayer's identification number</th>
<th>(f) Form number</th>
<th>(g) Tax year</th>
<th>(h) Amount assessed</th>
<th>(i) Amount paid</th>
<th>(j) Date paid (mo., day, yr.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>2</td>
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<td>12</td>
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<td></td>
</tr>
</tbody>
</table>

Amount of Claim. Enter the total of column (j), lines 1 through 12 . . . . . . . .

Sign Here

Signature

Date

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

For Privacy Act and Paperwork Reduction Act Notice, see back of form.
General Instructions
Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments
For the latest information about developments related to Form 6118 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/Form6118.

What’s new. For tax years beginning after 2017, the penalty under section 6695(g) (type J) has been expanded to include failure to exercise due diligence in determining eligibility for a taxpayer to file as head of household.

Purpose of Form
Use Form 6118 if you are a tax return preparer or a promoter and want to claim a refund of preparer or promoter penalties you paid, but that you believe were incorrectly charged.

Claims for More Than One Penalty
If you are claiming a refund for more than one of the penalties listed, you may be able to combine some of the penalties on one Form 6118. Following the chart below for combining the penalties. See Type of Penalty on the form for the list of penalties.

<table>
<thead>
<tr>
<th>IF you were billed...</th>
<th>THEN combine penalties...</th>
</tr>
</thead>
<tbody>
<tr>
<td>on the same statement</td>
<td>G and H only.</td>
</tr>
<tr>
<td>on the same statement or separate statements and the penalties were imposed by the same IRS office or service center</td>
<td>C, D, E, and F only. Note: Be sure to group the penalties from each statement together.</td>
</tr>
</tbody>
</table>

You cannot combine the following.
• Penalties from different IRS offices or service centers. See Where and When To File below.
• Penalties A, B, I, J, K, L, and M. You must file a separate Form 6118 for each of these even if you were charged for two or more of the same type.
• Penalties K and L. You must file a separate Form 6118 for each of these even if you were charged with both. Only columns (b), (c), and (g) through (i) need to be completed for penalties under sections 6700 and 6701.

Where and When To File
File Form 6118 with the IRS service center or IRS office that sent you the statement(s). If you were assessed a penalty under section 6700, 6701, or 6694, you may file a claim for refund upon paying 15% of the penalty if you do so within 30 days from the date of notice and demand. Otherwise, your claim under sections 6700 and 6701 must be filed within 2 years from the date you paid the penalty in full. Your claim under sections 6694 and 6695 must be filed within 3 years from the date you paid the penalty in full.

Specific Instructions
Identifying Number
If you are self-employed or employed by another preparer or promoter, enter your social security number. If you are the employer of other preparers or promoters, enter your employer identification number.

Type of Penalty
For item M (other penalties), enter the name of the penalty and the corresponding Internal Revenue Code section.

Additional Information
You may want to attach a copy of the penalty statements to your claim. In addition to completing the form, you must give your reasons for claiming a refund for each penalty listed. Identify each penalty by its line number and write your explanation in the space below.

For additional information about refunds of preparer penalties, see Regulations section 1.6696-1.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Subtitle F, Procedure and Administration, allows for additions to tax, additional amounts, and assessable penalties. This form is used by return preparers to make a claim for refund of any overpaid penalty amount. Section 6696 requires the return preparer to provide the requested information including his or her taxpayer identification number (SSN or EIN) within the prescribed time for filing a claim for refund.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal non-tax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 6 min.; Learning about the law or the form, 19 min.; Preparing the form, 22 min.; and Copying, assembling, and sending the form to the IRS, 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making Form 6118 simpler, we would be happy to hear from you. You can send us comments from www.irs.gov/FormComments. Or you can write to Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this address. Instead, see Where and When To File, earlier.

Reasons for claiming refund. Attach additional sheets if more space is needed. Write your name and identifying number on each sheet.
Dear [Name]

We have enclosed a copy of our examination report explaining why we are proposing a tax return preparer penalty. Please review this proposed assessment and let us know whether or not you agree by following the directions provided in this letter.

What to Do If You Agree

If you agree to the assessment and collection of the proposed penalty or penalties, please sign, date, and return one copy of the enclosed Form 5816, Report of Tax Return Preparer Penalty Case, in the envelope provided. Make your check or money order payable to the United States Treasury for the amount indicated on the form. If you agree but cannot pay in full, pay what you can within 30 days from receipt of this notice and we will send you a bill for the remaining amount with information about your payment options.

What to Do If You Disagree

If you don't agree with our findings, you may request a meeting or a telephone conference with the supervisor of the person whose name is shown above. If you still do not agree with our findings, you have the right to request a conference with our Appeals Office. You may request an appeals conference as follows:

1. If the total penalties shown in our report are $25,000 or less, send us a letter requesting Appeals consideration, indicating what you don't agree with, and the reasons why you don't agree.

2. If the total penalties shown in our report are more than $25,000, you must submit a formal protest. The requirements for a formal protest are explained in the enclosed Publication 5, Your Appeal Rights and How to Prepare a Protest If You Don't Agree.

What Will Happen If You Do Nothing

If you do not take any action by the response date noted above, we will assess the penalty and begin enforced collection actions.
Enclosures

We have enclosed Publication 5, *Your Appeal Rights and How to Prepare a Protest if You Don't Agree*, and Publication 594, *What You Should Know About the IRS Collection Process*.

If you have any questions, please contact the person identified at the top of the first page of this letter. Thank you for your cooperation.

Enclosures:
- Form 5816
- Publication 5
- Publication 594
- Envelope

Sincerely,

Internal Revenue Agent
Form 5816
(August 2017)

Report of Tax Return Preparer Penalty Case

Preparer's name

Preparer's PTIN, SSN, or EIN

Street address

City

State

Zip code

Select one box. Preparer is

Employer preparer

Self-employed preparer

Employee preparer

Examining Area/Function

South Atlantic / SSSE

Agreement

Full

None

In reply refer to

Name and title of person with whom penalty was discussed

Date of report

06/21/2019

The following information identifies the tax return or claim for which penalty is being charged

Taxpayer's name

SEE LIST ATTACHED

Taxpayer's SSN or EIN

SEE LIST ATTACHED

Street address

City

State

Zip code

Tax period

30

Master file tax code

Kind of Preparer Penalty Charged

A. Understatement of tax due to an unreasonable position. (IRC Sec. 6694(a))

B. Understatement of tax due to willful or reckless conduct. (IRC Sec. 6694(b))

C. Failure to furnish a copy of the return or claim to the taxpayer. (IRC Sec. 6695(a))

D. Failure to sign return or claim. (IRC Sec. 6695(b))

E. Failure to furnish identifying number on return or claim. (IRC Sec. 6695(c))

F. Failure to keep a copy or list of the returns or claims prepared. (IRC Sec. 6695(d))

G. Failure to file certain information returns. (IRC Sec. 6695(e))

H. Negotiating or endorsing a refund check issued to a taxpayer (other than the preparer). (IRC Sec. 6695(f))

I. Failure to comply with Due Diligence requirements. (IRC Sec. 6695(g))

J. Disclosure or use of information, other than to prepare or assist in preparing returns, (IRC Sec. 6713)

Total penalties

62,730

Examiner's signature

Other information

Note - Examiner Remove Appeals Message on Unagreed Cases

I have read the information on the back of this form that explains these penalties as they relate to tax return preparers. I agree to comply with those provisions in the future.

Consent to Assessment and Collection - I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States District Court the findings in this report, therefore, I give my consent to the immediate assessment and collection of the tax return preparer penalty.

Preparer's signature

Date

Catalog Number 24295B

www.irs.gov

Form 5816 (Rev. 8-2017)

Part 1

Appendix # 4.1
<table>
<thead>
<tr>
<th>Page</th>
<th>Note</th>
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</thead>
<tbody>
<tr>
<td>41</td>
<td>Preparer did not ask question or document questions asked about amount/qualified expenses actually paid.</td>
</tr>
<tr>
<td>42</td>
<td>Form 1098-T indicated grad student and preparer did not document questions asked to verify that the student was actually undergrad for at least part of the year.</td>
</tr>
<tr>
<td>43</td>
<td>Taxpayer's age was such that preparer should have questioned whether the taxpayer was actually enrolled in a qualified program. The record does not document questions were asked.</td>
</tr>
<tr>
<td>44</td>
<td>1098-T indicated tp did not attend at least half-time. Preparer did not document questions asked or responses to support claiming the credit.</td>
</tr>
<tr>
<td>45</td>
<td>Preparer did not ask or document if the Hope or AOTC had been claimed in prior years i.e. check that student was not claiming credits for more than 4 years.</td>
</tr>
<tr>
<td>46</td>
<td>Preparer did not ask questions on or keep a copy of completed Form 8863.</td>
</tr>
<tr>
<td>Client Details</td>
<td>Refundable Credits Claimed?</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Client Name</td>
<td>Client SSN</td>
</tr>
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</tbody>
</table>
| Yes | Yes | Yes | 8 | $1,530.00 | TP claimed Schedule C income from cash business with no Forms 1099 for Hair Stylist Services, claiming minimal income and substantial expenses, offsetting wage income and making eligible for EITC. The TP is claiming as (2) Children as Dependents and QCs. Adequate questioning relating to the Dependents Other Parent(s) and the TP's eligibility to claim the Dependents have not been documented and/or proper follow-up inquiries and review of supporting documents was not completed. The TP did not address the marital status/filing status of the TP. No supporting documents, aside from a Report Card for a student whose name doesn’t match either claimed dependent, were reviewed or maintained to address the unusual circumstances being claimed (i.e. School Records, Medical Records, Landlord Statement, Statement from Parent(s), etc.). TP is claiming a total of $4,000 in qualified education expenses on the return. Reasonable additional inquiries were not documented and supporting documentation was not reviewed/maintained relating to these expenses (Grants, Scholarships, Receipts, W-2, etc.). No Forms 1099-T were reviewed or maintained.
| Yes | Yes | No | 2 | $1,020.00 | L, 8, 15, 20, 24, 29, 30, 39, 41, 48 | TP claimed Schedule C Income from cash business with no Forms 1099 for Cleaning Services, claiming minimal income and substantial expenses, offsetting wage income and making eligible for Maximizing EITC. The TP is claiming as (2) Children as Dependents and QCs. Adequate questioning relating to the Dependents Other Parent(s) and the TP’s eligibility to claim the Dependents have not been documented and/or proper follow-up inquiries and review of supporting documents was not completed. The TP did not address the marital status/filing status of the TP. No supporting documents were reviewed or maintained to address the unusual circumstances being claimed (i.e. School Records, Medical Records, Landlord Statement, Statement from Parent(s), etc.). |

**Total Penalties:**

| 50 | 39 | 34 | 123 | $62,730.00 |

**General Case Notes:**

The RP has attempted to address living situations in "interview summaries" signed by the clients but many of these summaries note additional parents/relatives/individuals living in the household, unable to work/not working, and being supported by said client, but not being claimed on the returns in question.

Numerous intake forms claim exactly $4,000 in Tuition & Enrollment Expenses which, coincidentally, is the maximum amount allowed to account for AOTC.

The vast majority of AOTC being claimed have NO Forms 1099-T and state that tuition and expenses were paid with "cash" and no receipts are available.

The RA has noted patterns of clients with substantial Form W-2 income reporting cash businesses on Schedule C, with little to no corresponding Forms 1099, generating substantial losses (Minimal Income / High Expense) to place them in range to claim/increase their claim for EITC.

The RA has also noted patterns of clients with minimal or no Form W-2 income reporting cash business on Schedule C, with little to no corresponding Forms 1099, generating additional income (Additional income / Minus Expense) to increase/maximize the amount of EITC.
## Penalty reason codes to be used with Standardized Workpaper

Instructions: These codes MUST BE entered in Column Y of the workpaper. Choose all that apply.

A copy of these codes should be attached with the workpapers.

<table>
<thead>
<tr>
<th>Reason Code</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>Failed</td>
<td></td>
</tr>
<tr>
<td>Knowledge</td>
<td>1</td>
</tr>
<tr>
<td>Knowledge</td>
<td>2</td>
</tr>
<tr>
<td>Form 8867</td>
<td>3</td>
</tr>
<tr>
<td>Recordkeeping</td>
<td>4</td>
</tr>
<tr>
<td>Recordkeeping</td>
<td>5</td>
</tr>
<tr>
<td>All</td>
<td>6</td>
</tr>
</tbody>
</table>

### EITC and ACTC Qualifying Child

| Knowledge   | 7           | The QC was other than a son or daughter and the preparer failed to ask why the parents are not claiming the child and/or failed to document the response to this question. |
| Knowledge   | 8           | If the return has single or head of household filing status, and the primary taxpayer is a father or mother, did the preparer ask if the other parent was eligible to claim the child? |
| Knowledge   | 9           | The preparer failed to ask if the client had medical records to support the disability and/or failed to confirm that the disability would last for more than a year. |
| Knowledge   | 10          | The QC is claiming a disabled qualifying child/adult. The preparer failed to ask if the client had medical records to support the disability and/or failed to confirm that the disability would last for more than a year. |
| Knowledge   | 11          | The preparer did not ask if the child was placed by an authorized agency or court or if the taxpayer could document the placement. |
| Knowledge   | 12          | The preparer did not ask questions about the related relationships and residency requirements. |
| Knowledge   | 13          | The paid preparer asked questions about the related relationships and residency requirements. |
| Knowledge   | 14          | The paid preparer asked questions about the related relationships and residency requirements. |
| Knowledge   | 15          | The paid preparer asked questions about the related relationships and residency requirements. |
| Knowledge   | 16          | The paid preparer asked questions about the related relationships and residency requirements. |
| Knowledge   | 17          | The paid preparer asked questions about the related relationships and residency requirements. |

### Filing Status

<p>| Knowledge   | 18          | Paid preparer did not ask adequate questions to determine that a separated individual met the exception to qualify for HOH filing status. Including whether the taxpayer lived apart from the spouse all the last 6 months of the year and how long the QC lived with the other parent. |
| Knowledge   | 19          | Paid preparer did not ask adequate questions to determine the taxpayer's correct filing status. |
| Knowledge   | 20          | Paid preparer did not ask adequate questions to determine the taxpayer's correct filing status. |</p>
<table>
<thead>
<tr>
<th>Knowledge</th>
<th>22</th>
<th>W-2 did not match amount of wages on the return.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge</td>
<td>23</td>
<td>Household help income claimed on the return. Preparer did not ask adequate questions to determine how taxpayer computed the amount of income and whether taxpayer had records to document the income received.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>24</td>
<td>Schedule C with no 1099. Preparer did not ask adequate questions concerning how the taxpayer computed income, and whether the taxpayer had books and records to support income computation.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>25</td>
<td>Schedule C with no expenses when expenses would be expected. Preparer did not ask adequate questions concerning why the taxpayer had no expenses and did not ask the taxpayer if he could reconstruct expenses.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>26</td>
<td>Schedule C cash business that maximizes EITC. The paid preparer did not ask adequate questions concerning existence of the business, how taxpayer computed income and expense, or if the taxpayer had books and records to document income and expense claimed.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>27</td>
<td>Schedule C on return, but no Schedule C on the client intake form. There is no documentation that explains this difference in the file.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>28</td>
<td>Sch C income and/or expenses are round numbers. Preparer did not ask adequate questions to determine that figures represent actual income and expense and/or whether the taxpayer had books and records to support the Schedule C.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>29</td>
<td>Schedule C with loss or no income or questionable expenses that lowers taxpayer income to qualify for EIC and preparer did not ask adequate questions about how taxpayer computed income and expense and/or whether taxpayer has records to support income and expenses claimed.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>30</td>
<td>Returns prepared by the paid preparer exhibit a pattern of multiple Schedule C's with the same activity or same/similar income and expense. The paid preparer could not provide adequate explanation.</td>
</tr>
</tbody>
</table>

**Penalty Assessed Against Employer vs Employee**

<table>
<thead>
<tr>
<th>Knowledge</th>
<th>31</th>
<th>Penalty asserted against the employer preparer. Employer did not provide adequate training, procedures/expectations and guidance to the employee preparer.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge</td>
<td>32</td>
<td>Penalty asserted against the employer preparer and employee preparer. Employer/employee participated in or knew about the noncompliance prior to the filing of the return.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>33</td>
<td>Penalty asserted against employer. Employer disregarded procedures/internal controls/ignored issues that should have led them to question return compliance with due diligence.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>34</td>
<td>Penalty asserted against the employee. Employee did not follow/disregarded procedures/education and guidance.</td>
</tr>
<tr>
<td>Knowledge</td>
<td>35</td>
<td>Paid preparer relied on software alone to meet due diligence requirements when additional inquiries were warranted. Other issue noted by examiner. Examiner must insert explanation.</td>
</tr>
</tbody>
</table>

**ACTC QC with ITIN**

<table>
<thead>
<tr>
<th>Knowledge</th>
<th>37</th>
<th>Paid preparer failed to ask/document if client had records to support substantial presence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge</td>
<td>38</td>
<td>Preparer failed to complete or keep a copy of completed schedule 8812.</td>
</tr>
</tbody>
</table>

**ACTC**

<table>
<thead>
<tr>
<th>Knowledge</th>
<th>39</th>
<th>Student had no 1098-T. Preparer did not document steps tp took to get one and why the tp didn't receive one. Preparer did not ask adequate questions to determine student met eligibility requirements.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge</td>
<td>40</td>
<td>Preparer did not keep copy of 1098-T relied on.</td>
</tr>
</tbody>
</table>