

110TH CONGRESS
2D SESSION

S. 2851

To amend the Internal Revenue Code of 1986 to modify the penalty on the understatement of taxpayer's liability by tax return preparers.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2008

Mr. BUNNING (for himself, Mr. CONRAD, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to modify the penalty on the understatement of taxpayer's liability by tax return preparers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. MODIFICATION OF PENALTY ON UNDERSTATE-
4 MENT OF TAXPAYER'S LIABILITY BY TAX RE-
5 TURN PREPARER.

6 (a) IN GENERAL.—Subsection (a) of section 6694 of
7 the Internal Revenue Code of 1986 (relating to under-
8 statement due to unreasonable positions) is amended to
9 read as follows:

1 “(a) UNDERSTATEMENT DUE TO UNREASONABLE
2 POSITIONS.—

3 “(1) IN GENERAL.—If a tax return preparer—

4 “(A) prepares any return or claim of re-
5 fund with respect to which any part of an un-
6 derstatement of liability is due to a position de-
7 scribed in paragraph (2), and

8 “(B) knew (or reasonably should have
9 known) of the position,

10 such tax return preparer shall pay a penalty with re-
11 spect to each such return or claim in an amount
12 equal to the greater of \$1,000 or 50 percent of the
13 income derived (or to be derived) by the tax return
14 preparer with respect to the return or claim.

15 “(2) UNREASONABLE POSITION.—

16 “(A) IN GENERAL.—Except as otherwise
17 provided in this paragraph, a position is de-
18 scribed in this paragraph unless there is or was
19 substantial authority for the position.

20 “(B) DISCLOSED POSITIONS.—If the posi-
21 tion was disclosed as provided in section
22 6662(d)(2)(B)(ii) and is not a position to which
23 subparagraph (C) applies, the position is de-
24 scribed in this paragraph unless there is a rea-
25 sonable basis for the position.

1 “(C) TAX SHELTERS AND REPORTABLE
2 TRANSACTIONS.—If the position is with respect
3 to a tax shelter (as defined in section
4 6662(d)(2)(C)(ii)) or a reportable transaction
5 to which section 6662A applies, the position is
6 described in this paragraph unless it is reason-
7 able to believe that the position would more
8 likely than not be sustained on its merits.

9 “(3) REASONABLE CAUSE EXCEPTION.—No
10 penalty shall be imposed under this subsection if it
11 is shown that there is reasonable cause for the un-
12 derstatement and the tax return preparer acted in
13 good faith.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to returns prepared after the date
16 of the enactment of the Small Business and Work Oppor-
17 tunity Tax Act of 2007.

