

PROVISION	PRESENT LAW	JCT STAFF RECOMMENDATIONS	TREASURY RECOMMENDATIONS
B. Standards Applicable to Undisclosed Positions			
1. Taxpayers	Penalty may apply if there is no <u>substantial</u> authority for the undisclosed position. (Generally, at least a <u>40</u> percent likelihood of success if challenged.)	Penalty may apply unless the taxpayer reasonably believes that the tax treatment is more likely than not the correct tax treatment under the Code. (Generally, more than 50 percent likelihood of success if challenged.)	Penalty may apply if there is no substantial authority for the undisclosed position. (Generally, at least a 40 percent likelihood of success if challenged.)
2. Practitioners	Penalty may apply if there is no <u>realistic</u> possibility of being sustained on the merits. (Generally, at least a <u>33-1/3</u> percent likelihood of success if challenged.)	Penalty may apply unless the taxpayer reasonably believes that the tax treatment is more likely than not the correct tax treatment under the Code. (Generally, more than 50 percent likelihood of success if challenged.)	Penalty may apply if there is no substantial authority for the undisclosed position. (Generally, at least a 40 percent likelihood of success if challenged.)

*not frivolous 10%*

*114*

**COMPARISON OF JOINT COMMITTEE STAFF AND TREASURY  
RECOMMENDATIONS RELATING TO PENALTY AND INTEREST PROVISIONS  
OF THE INTERNAL REVENUE CODE**

Scheduled for a Public Hearing  
Before the  
SUBCOMMITTEE ON OVERSIGHT  
of the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on November 9, 1999

Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

**Table 1.**

Preparer Confidence Standards Under the 1989 Act	
"Tax Shelters" and Reportable Avoidance Transactions	<i>No separate standard</i>
Undisclosed Return Positions	Realistic Possibility <sup>1</sup>
Disclosed Return Positions	Not Frivolous <sup>2</sup>



November 5, 1999

JCX-79-99

<sup>1</sup> Realistic possibility of success on the merits is the equivalent of a 1 in 3 chance of prevailing if the position is challenged. The standard is more fully defined in the prior version of Reg. §1.6694-2(b). See T.D. 8382, 1992-1 CB 392.

<sup>2</sup> "Not frivolous" is the equivalent of a likelihood of success of at least 10 percent if the position is challenged. The standard is in the prior version of Reg. §1.6694-2(c)(2) as being "not patently improper." See T.D. 8382, 1992-1 CB 392; see also Staff of the Joint Comm. on Taxation, 106th Cong., 2d Sess., Comparison of Joint Committee Staff and Treasury Recommendations Relating to Penalty and Interest Provisions of the Internal Revenue Code, at 13, JCX-79-99 (1999), available at [www.house.gov/jct/x-79-99.pdf](http://www.house.gov/jct/x-79-99.pdf).