

The objectivity of the reasonable basis defense to tax penalties

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If a taxpayer underpays taxes because of negligence, a penalty of 20% applies. Treasury regulations provide for an exception to this penalty, known as “the reasonable basis exception,” in which a taxpayer’s position “is not attributable to negligence” if the return position “has a reasonable basis.” Historically, a tax practitioner could have reasonably believed — and still should believe — that the reasonable basis defense against negligence penalties is an objective standard, in which the degree of legal support for the return position is determinative, as opposed to a subjective standard, in which the taxpayer’s reliance on that legal support would be determinative.

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