

TITLE 4: ECONOMIC RESOURCES  
DIVISION 1: REVENUE AND TAXATION

**§ 18132. Understatement of Taxpayer's Liability by CNMI Tax Return Preparer.**

(a) *Understatements Due to Unrealistic Positions.* If:

(1) Any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there was not a realistic possibility of being sustained on the merits,

(2) Any person who is a CNMI tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position, and

(3) Such position was not disclosed as provided in section 18127(d)(2)(B)(ii) or was frivolous, such person shall pay a penalty of \$250 with respect to such return or claim unless it is shown that there is reasonable cause for the understatement and such person acted in good faith.

(b) *Willful or Reckless Conduct.* If any part of any understatement of liability with respect to any return or claim for refund is due:

(1) To a willful attempt in any manner to understate the liability for tax by a person who is a CNMI tax return preparer with respect to such return or claim, or

(2) To any reckless or intentional disregard of rules or regulations by any such person, such person shall pay a penalty of \$1000 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).

(c) *Extension of Period of Collection Where Preparer Pays 15 Percent of Penalty.*

(1) In General. If, within 30 days after the day on which notice and demand of any penalty under subsection (a) or (b) is made against any person who is a CNMI tax return preparer, such person pays an amount which is not less than 15 percent of the amount of such penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). The beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the Commonwealth Superior Court. Nothing in this paragraph shall be construed to prohibit any counterclaim for the remainder of such penalty in a proceeding begun as provided in paragraph (2).

(2) Preparer Must Bring Suit in Commonwealth Superior Court to Determine His Liability for Penalty. If, within 30 days after the day on which his claim for refund of any partial payment of any penalty under subsection (a) or (b) is denied (or, if earlier, within 30 days after the expiration of 6 months after the day on which he filed the claim for refund), the CNMI tax return preparer fails to begin a proceeding in the Commonwealth Superior Court for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the applicable 30-day period referred to in this paragraph.

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(3) Suspension of Running of Period of Limitations on Collection. The running of the period of limitations provided in section 18102 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(d) *Abatement of Penalty Where Taxpayer's Liability Not Understated.* If at any time there is a final administrative determination or a final judicial decision that there was no understatement of liability in the case of any return or claim for refund with respect to which a penalty under subsection (a) or (b) has been assessed, such assessment shall be abated, and if any portion of such penalty has been paid the amount so paid shall be refunded to the person who made such payment as an overpayment of tax without regard to any period of limitations which, but for this subsection would apply to the making of such refund.

(e) *Understatement of Liability Defined.* For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable with respect to any tax imposed by this Division or any overstatement of the net amount creditable or refundable with respect to any such tax. Except as otherwise provided in subsection (d), the determination of whether or not there is an understatement of liability shall be made without regard to any administrative or judicial action involving the taxpayer.

(f) *CNMI Tax Return Preparer.*

(1) In General. The term "CNMI tax return preparer" for purposes of this Division means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by the Division or any claim for refund of tax imposed by this Division. 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

(2) Exceptions. A person shall not be a "CNMI tax return preparer" merely because such person:

(A) Furnishes typing, reproducing, or other mechanical assistance,

(B) Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(C) Prepares as a fiduciary a return or claim for refund for any person,  
or

(D) Prepares a claim for refund for a taxpayer in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

**Source:** PL 14-35, § 4 (1922), modified.

**Commission Comment:** In subsections (a)(3) and (c)(3) above, the Commission changed the section numbers originally referenced in PL 14-35 to the proper renumbered section numbers pursuant to its authority by 1 CMC § 3806(c).