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THE TAX LAWYER

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### IRS Penalties Despite Reliance on Adviser

You might think claiming “my tax adviser told me to do it” gets you out of penalties with the IRS. Not always. See [Relying On Tax Advisers May Not Prevent Penalties](#).

When the IRS changes your tax return it usually adds penalties and interest. Interest generally can't be waived, but “I relied on my tax adviser” can be a potent defense to penalties. Yet claiming you relied on your tax lawyer or accountant doesn't always work.

For example, it matters if the tax adviser is independent or your employee. Independent is clearly better. In [Seven W. Enterprises, Inc. & Subsidiaries and Highland Supply Corporation & Subsidiaries](#), the Tax Court distinguished **outside** tax advisers—penalties abated—from in-house tax advisers—penalties applied. Interestingly, this was the **same** adviser, just in two different time periods.

When he was an outside tax consultant, the company was entitled to rely on his tax advice and wasn't liable for penalties. The contract under which his services were rendered specifically said he wasn't subject to the company's supervision. The company provided an experienced tax professional with all the relevant information and relied on him in good faith.

But when the company hired him as their in-house tax VP, they no longer had “reasonable cause.” As VP of taxes, he was acting on behalf of the company as an employee. That meant penalties applied.

To avoid penalties ask:

1. Was the adviser a competent professional with sufficient expertise to justify the reliance?
2. Did the taxpayer provide the adviser with necessary and accurate information?
3. Did the taxpayer actually rely in good faith on the adviser's judgment?

**Accuracy-Related Penalty?** The [accuracy-related penalty](#) is 20% of a tax underpayment. It goes up to a whopping 40% in certain cases. You can often avoid the penalty if there was reasonable cause and if the taxpayer acted in good faith.

For more, see:

[IRS Penalties Despite Dead/Embezzling Accountant!](#)

[More Tax Defenses: "I Forgot!"](#)

[Relying On Tax Advisers May Not Prevent Penalties](#)

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