PacificCPE

IRS Circular 230

Course #90151B

Taxes

2 Credit Hours

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IRS CIRCULAR 230

This course outlines the ethical and professional responsibilities of tax practitioners under IRS Circular 230 and the AICPA's Statements on Standards for Tax Services (SSTS). It highlights key compliance requirements, best practices, and the standards that govern tax return preparation and taxpayer representation. Designed to promote ethical conduct, the course ensures practitioners understand and apply the rules that guide professional tax practice.

LEARNING ASSIGNMENTS AND OBJECTIVES

As a result of studying each assignment, you should be able to meet the objectives listed below each individual assignment.

SUBJECTS

IRS Circular 230
Statements on Standards for Tax Services

Study the course materials

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

Objectives:

- Identify the Internal Revenue Service Requirements as outlined in Circular 230.
- Identify the CPA's responsibilities according to the AICPA's Statements on Standards for Tax

NOTICE

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EXAM OUTLINE

- **TEST FORMAT:** The final exam for this course consists of 10 multiple-choice questions and is based specifically on the information covered in the course materials.

- **ACCESS FINAL EXAM:** Log in to your account and click Take Exam. A copy of the final exam is provided at the end of these course materials for your convenience, however you must submit your answers online to receive credit for the course.

- **LICENSE RENEWAL INFORMATION:** This course qualifies for **2** CPE hours.

- **PROCESSING:** You will receive the score for your final exam immediately after it is submitted. A score of 70% or better is required to pass.

- **CERTIFICATE OF COMPLETION:** Will be available in your account to view online or print. If you do not pass an exam, it can be retaken free of charge.

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CHAPTER 1: IRS CIRCULAR 230

Chapter Objectives

After completing this chapter, you should be able to:

- Identify the Internal Revenue Service Requirements as outlined in Circular 230.

Introduction

The tax preparation and tax consulting industry has historically enjoyed less government regulation than the practice of accountancy. In 1995, the IRS proposed studying the concept of tax preparer registration in order to combat rising fraud in the earned income credit program. This proposal was dropped because of widespread industry opposition. Instead, the IRS increased the scrutiny applied to firms applying to file tax returns electronically. In 2010, the IRS issued regulations requiring the registration of tax preparers. Since January 1, 2011, all paid tax return preparers have been required to have a Preparer Tax Identification Number (PTIN).

The tax practice field has had less ethical guidance because of the unique relationship between the CPA and client. In a tax engagement, the CPA is an "advocate of the taxpayer." The courts have held that there is nothing illegal or sinister in a taxpayer arranging one's affairs so as to pay the lowest tax legally available.

I. CIRCULAR 230

Circular 230 is published by the Treasury Department. It prescribes regulations governing the practice of attorneys, CPAs, EAs, Enrolled Actuaries, appraisers, and others before the Internal Revenue Service. Circular 230 has been amended several times recently, and more changes are proposed. This course reprints and discusses most, but not all, of Circular 230.

A. EXPLANATIONS OF PROVISIONS

Tax advisors play an increasingly important role in the federal tax system, which is founded on principles of voluntary compliance. The tax system is best served when the public has confidence in the honesty and integrity of the professionals providing tax advice. To restore, promote, and maintain the public's confidence in those individuals and firms, Circular 230 sets forth regulations and best practices applicable to all tax advisors. Circular 230 regulations are limited to practice before the IRS and do not alter or supplant other ethical standards applicable to practitioners.

B. WHAT IS NOT CONSIDERED "PRACTICE BEFORE THE IRS"

Section 10.7 of Circular 230 provides a long list of exceptions and exclusions to Circular 230. The following persons and situations are not considered "practicing before the IRS" and therefore are generally exempt from the rules we will discuss later in this course.

(a) Representing oneself – individuals may appear on their own behalf before the IRS, provided they present satisfactory identification.

(b) Participating in rulemaking – individuals may participate in rulemaking.

(c) Limited practice –

(1) In general. Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer

(iii) A general partner or regular full-time employee of a partnership may represent the partnership

(iv) A bona fide officer or a regular full-time employee of a corporation, association, or organized group may represent the corporation, association, or organized group

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(2) Limitations.

(i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section.

(ii) The Commissioner, or delegate, may, after notice and opportunity for a conference, deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify a sanction under §10.50.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as prescribed by the Internal Revenue Service.

(d) Special appearances. The Commissioner, or delegate, may, subject to conditions deemed appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) Fiduciaries. For purposes of this part, a fiduciary (for example, a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

(f) Effective/applicability date. This section is applicable beginning August 2, 2011.

Observation

None of the items above in (a)-(e) are considered to be practicing before the IRS.

Section 10.8 of Circular 230 discusses the application of Circular 230 on those that prepare tax returns and the application of the rules to other individuals as follows:

(a) Preparing all or substantially all of a tax return. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number. Except as otherwise prescribed in forms, instructions, or other appropriate guidance, an individual must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer to obtain a preparer tax identification number. Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C.

(b) Preparing a tax return and furnishing information. Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund (provided the individual prepares less than substantially all of the tax return or claim for refund), appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(c) Application of rules to other individuals. Any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service is subject to the duties and restrictions relating to practice in subpart B, as well as subject to the sanctions for violation of the regulations in subpart C. Unless

otherwise a practitioner, however, an individual may not for compensation prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund, or sign tax returns and claims for refund. For purposes of this paragraph, an individual described in 26 CFR 301.7701-15(f) is not treated as having prepared all or a substantial portion of the document by reason of such assistance.

(d) Effective/applicability date. This section is applicable beginning August 2, 2011.

An EA who is practicing before the IRS and does not fall into one of the exception categories above is subject to subpart B of Circular 230 – Duties and Restrictions relating to practice before the IRS. It is reproduced below and should be read in its entirety.

C. CIRCULAR 230: SUBPART B -- DUTIES AND RESTRICTIONS RELATING TO PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

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10.37 Requirements for written advice

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SECTION 10.20 Information to be furnished.

(a) To the Internal Revenue Service.

(1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(b) Interference with a proper and lawful request for records or information.

A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

SECTION 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

Observation
Errors and Omissions

If you know that a client has not complied with the U.S. revenue laws or has made an error in, or omission from, any return, affidavit, or other document which the client submitted or executed under U.S. revenue laws, you must promptly inform the client of that noncompliance, error, or omission and advise the client regarding the consequences under the Code and regulations of that noncompliance, error, or omission. Depending on the particular facts and circumstances, the consequences of an error or omission could include (among other things) additional tax liability, civil penalties, interest, criminal penalties, and an extension of the statute of limitations.

SECTION 10.22 Diligence as to accuracy.

(a) In general.

A practitioner must exercise due diligence:

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) Reliance on others.

Except as modified in §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

Observation
Professional Responsibility and the Report of Foreign Bank and Financial Accounts

Practitioners who prepare Form 1040 must inquire of their clients with sufficient detail to prepare correct responses for the two questions at the bottom of Schedule B. Penalties of up to $10,000 can apply for a simple failure to file the required forms.

(c) Effective/applicability date. Paragraph (a) of this section is applicable on September 26, 2007. Paragraph (b) of this section is applicable June 12, 2014.

Observation
Due Diligence

You must exercise due diligence in preparing and filing tax returns and other documents/submissions, and in determining the correctness of representations made by you to your client or to the IRS. You can rely on the work product of another person if you use reasonable care in engaging, supervising, training, and evaluating that person, taking into account the nature of the relationship between you and that person. You generally may rely in good faith and without verification on information furnished by your client, but you cannot ignore other information that has been furnished to you or which is actually known by you. You must make reasonable inquiries if any information furnished to you appears to be incorrect, incomplete or inconsistent with other facts or assumptions.

SECTION 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

Observation
Handling Matters Promptly

You cannot unreasonably delay the prompt disposition of any matter before the Internal Revenue Service. This applies with respect to responding to your client as well as to IRS personnel. You cannot advise a client to submit any document to the IRS for the purpose of delaying or impeding the administration of the Federal tax laws.

Example

Nash, CPA is representing a client under audit by the IRS. Nash believes all the factual matters of the audit could be resolved in 6-8 weeks. Nash learns that the auditor assigned to the audit is planning to retire in six months. Nash believes that if he could delay the audit by raising unreasonable objections until after the IRS agent retires, he could possibly get a better result from the new agent. Purposely delaying the conclusion of the audit until after the IRS agent retires would be a violation of Section 10.23.

SECTION 10.24 Assistance from disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of §10.25 or any federal law would be violated.

SECTION 10.25 Practice by former Government employees, their partners and their associates.

(a) Definitions.

For purposes of this section:

(1) Assist means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly or indirectly.

(2) Government employee is an officer or employee of the United States or any agency of the United States, including a special Government employee as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) Member of a firm is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) Particular matter involving specific parties is defined at 5 CFR 2637.201(c), or superseding post-employment regulations issued by the U.S. Office of Government Ethics.

(5) Rule includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rulemaking or as Treasury decisions, revenue rulings, and revenue procedures published in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(b)).

(b) General rules.

(1) No former Government employee may, subsequent to Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who personally and substantially participated in a particular matter involving specific parties may, subsequent to Government employment, represent or knowingly assist, in that particular matter, any person who is or was a specific party to that particular matter.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a particular matter involving specific parties may not, within two years after Government employment is ended, represent in that particular matter any person who is or was a specific party to that particular matter.

(4) No former Government employee may, within one year after Government employment is ended, communicate with or appear before, with the intent to influence, any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule the development of which the former Government employee participated in, or for which, within a period of one year prior to the termination of Government employment, the former government employee had official responsibility. This paragraph (b)(4) does not, however, preclude any former employee from appearing on one's own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a particular matter involving specific parties involving the application or interpretation of a rule with respect to that particular matter, provided that the representation is otherwise consistent with the other provisions of this section and the former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) Firm representation.

(1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any particular matter with respect to which the restrictions of paragraph (b)(2) of this section apply to the former Government employee, in that particular matter, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the office(s) of the Internal Revenue Service administering or enforcing this part.

(d) Pending representation. The provisions of this regulation will govern practice by former Government employees, their partners and associates with respect to representation in particular matters involving specific parties where actual representation commenced before the effective date of this regulation.

(e) Effective/applicability date. This section is applicable beginning August 2, 2011.

Observation

This section reflects changes to federal statutes governing post-employment restrictions applicable to former government employees.

It may impose obligations on the firms of former government employees that exceed the obligations of other practitioners.

SECTION 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

Observation

Obviously, a notary may not be a party to the transaction, benefit from the transaction, or have a conflict of interest.

SECTION 10.27 Fees.

(a) In general.

A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.

Observation

A practitioner may charge different rates depending upon the complexity of the issue.

(b) Contingent fees.

(1) Except as provided in paragraphs (b)(2), (3), and (4) of this section, a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to—

(i) An original tax return; or

(ii) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return

Observation

Contrary to AICPA standards, a contingent fee may not be charged on an original return even when the practitioner reasonably anticipates that the return position will be substantively reviewed by the IRS prior to filing of the return.

(3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

(4) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

(c) Definitions. For purposes of this section—

(1) Contingent fee is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) Matter before the Internal Revenue Service includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

(d) Effective/applicability date. This section is applicable for fee arrangements entered into after March 26, 2008.

SECTION 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her federal tax obligations.

(b) For purposes of this section – Records of the client include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current federal tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

Observation

A practitioner may withold the client's current year completed tax return pending payment of fees.

AICPA and State Law Comparison

This section is more restrictive than AICPA rules. However, most state accountancy laws require the immediate return of all client records while the IRS rule pertains only to tax related records.

Observation
Client Records

On request of a client, you must promptly return any client records necessary for the client to comply with his or her Federal tax obligations, even if there is a dispute over fees. You may keep copies of these records. If state law allows you to retain a client's records in the case of a fee dispute, you need only return the records that must be attached to the client's return but you must provide the client with reasonable access to review and copy any additional client records retained by you that are necessary for the client to comply with his or her Federal tax obligations. The term "client records" includes all written or electronic materials provided to you by the client or a third party. "Client records" also include any tax return or other document that you prepared and previously delivered to the client, if that return or document is necessary for the client to comply with his or her current Federal tax obligations. You are not required to provide a client with any of your work product- i.e., any return, refund claim, or other document that you have prepared but not yet delivered to the client if (i) you are withholding the document pending the client's payment of fees related to the document and (ii) your contract with the client requires the payment of those fees prior to delivery.

SECTION 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period after the informed consent, but in no event later than 30 days.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

(d) Effective/applicability date. This section is applicable on September 26, 2007.

Observation
Conflicts of Interest

A conflict of interest exists if representing one of your clients will be directly adverse to another client. A conflict of interest also exists if there is a significant risk that representing a client will be materially limited by your responsibilities to another client, a former client or a third person, or by your personal interests. When a conflict of interest exists, you may not represent a client in an IRS matter unless (i) you reasonably believe that you can provide competent and diligent representation to all affected clients, (ii) your representation is not prohibited by law, and (iii) all affected clients give informed, written consent to your representation. You must retain these consents for 36 months following the termination of the engagement and make them available to the IRS/OPR upon request.

SECTION 10.30 Solicitation.

(a) Advertising and solicitation restrictions.

(1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents or enrolled retirement plan agents, in describing their professional designation, may not utilize the term of art "certified" or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions for enrolled agents are "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service." Similarly, examples of acceptable descriptions for enrolled retirement plan agents are "enrolled to represent taxpayers before the Internal Revenue Service as a retirement plan agent" and "enrolled to practice before the Internal Revenue Service as a retirement plan agent." An example of an acceptance description for registered tax return preparers is "designated as a registered tax return preparer by the Internal Revenue Service."

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a

practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) Fee information.

(1) (i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information:

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) Communication of fee information.

Fee information may be communicated in professional lists, telephone directories, print media, mailings, electronic mail, facsimile, hand delivered flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) Improper associations.

A practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(e) Effective/applicability date. This section is applicable beginning August 2, 2011.

Observation
Solicitation

With respect to any Internal Revenue Service matter, you may not use any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. You also may not assist, or accept assistance from, any person or entity who obtains clients or otherwise practices in violation of the solicitation provisions.

SECTION 10.31 Negotiation of taxpayer checks.

(a) A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

(b) Effective/applicability date. This section is applicable beginning June 12, 2014.

Observation
Negotiating Checks

You may not endorse, negotiate, electronically transfer, or direct the deposit of any government check relating to a Federal tax liability issued to a client. This prohibits any person subject to Treasury Circular No. 230 from directing or accepting payment from the government to the taxpayer into an account owned or controlled by that person. This provision does not apply to whistleblower payments.

SECTION 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

SECTION 10.33 Best practices for tax advisors.

(a) Best practices. Tax advisors should provide clients with the highest quality representation concerning federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

(1) Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Establishing the facts, determining which facts are relevant, and evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

(3) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

(4) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) Procedures to ensure best practices for tax advisors. Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

(c) Applicability date. This section is effective after June 20, 2005.

SECTION 10.34 Standards with respect to tax returns and documents, affidavits and other papers.

(a) Tax returns.

(1) A practitioner may not willfully, recklessly, or through gross incompetence —

(i) Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that —

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in Section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in Section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that—

(A) Lacks a reasonable basis;

(B) Is an unreasonable position as described in Section 6694(a)(2) of the Code (including the related regulations and other published guidance); or

(C) Is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in Section 6694(b)(2) of the Code (including the related regulations and other published guidance).

(2) A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence.

(b) Documents, affidavits and other papers.

(1) A practitioner may not advise a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.

(2) A practitioner may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service

(i) The purpose of which is to delay or impede the administration of the federal tax laws;

(ii) That is frivolous; or

(iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

(c) Advising clients on potential penalties.

(1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to

(i) A position taken on a tax return if—

(A) The practitioner advised the client with respect to the position; or

(B) The practitioner prepared or signed the tax return; and

(ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.

(2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

(d) Relying on information furnished by clients. A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information

furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(e) Effective/applicability date. Paragraph (a) of this section is applicable for returns or claims for refund filed or advice provided beginning August 2, 2011. Paragraphs (b) through (d) of this section are applicable to tax returns, documents, affidavits and other papers filed on or after September 26, 2007.

Observation
Tax Return Positions

You cannot sign a tax return or refund claim or advise a client to take a position on a tax return or refund claim that you know or should know contains a position (i) for which there is no reasonable basis; (ii) which is an unreasonable position as defined in Internal Revenue Code §6694(a)(2); or, (iii) which is a willful attempt to understate tax liability, or a reckless or intentional disregard of rules or regulations. An unreasonable position is one which lacks substantial authority as defined in IRC §6662 but has a reasonable basis, and is disclosed. For purposes of Circular 230 disclosure, if you advised the client regarding the position, or you prepared or signed the tax return, you must inform a client of any penalties that are reasonably likely to apply to the client with respect to the tax return position and how to avoid the penalties through disclosure (or, by not taking the position).

SECTION 10.35 Competence.

(a) A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.

(b) Effective/applicability date. This section is applicable beginning June 12, 2014.

SECTION 10.36 Procedures to ensure compliance.

(a) Any individual subject to the provisions of this part who has (or individuals who have or share) principal authority and responsibility for overseeing a firm's practice governed by this part, including the provision of advice concerning Federal tax matters and preparation of tax returns, claims for refund, or other documents for submission to the Internal Revenue Service, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with subparts A, B, and C of this part, as applicable. In the absence of a person or persons identified by the firm as having the principal authority and responsibility described in this paragraph, the Internal Revenue Service may identify one or more individuals subject to the provisions of this part responsible for compliance with the requirements of this section.

(b) Any such individual who has (or such individuals who have or share) principal authority as described in paragraph (a) of this section will be subject to discipline for failing to comply with the requirements of this section if--

(1) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this part, as applicable, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable;

(2) The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that firm procedures in effect are properly followed, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable; or

(3) The individual knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with this part, as applicable, and the individual, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) Effective/applicability date. This section is applicable beginning June 12, 2014.

Observation

This provision is important for a number of reasons. First, it places the first layer of responsibility on the firm as part of a "self-regulatory" environment. Second, it puts certain individuals on notice that they could be subject to individual disciplinary actions based on the actions of others in the firm. The individual will be responsible to ensure:

1. The firm has procedures in place to ensure compliance with Circular 230;
2. The firm follows the requisite procedures; and
3. Individuals in the firm do not engage in a pattern and practice of disregarding the provisions of Circular 230.

In essence, the IRS is making certain individuals at the firm into enforcers.

Observation
Supervisor Responsibilities

If you have or share principal authority and responsibility for overseeing your firm's tax practice, you must take reasonable steps to ensure that your firm has adequate procedures in place to raise awareness and to promote compliance with Circular 230 by your firm's members, associates, and employees and that all such employees are complying with the regulations governing practice before the IRS.

SECTION 10.37 Requirements for written advice.

(a) Requirements. (1) A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters subject to the requirements in paragraph (a)(2) of this section. Government submissions on matters of general policy are not considered written advice on a Federal tax matter for purposes of this section. Continuing education presentations provided to an audience solely for the purpose of enhancing practitioners' professional knowledge on Federal tax matters are not considered written advice on a Federal tax matter for purposes of this section. The preceding sentence does not apply to presentations marketing or promoting transactions.

(2) The practitioner must--

(i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

(ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;

(iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

(iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

(v) Relate applicable law and authorities to facts; and

(vi) Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

(3) Reliance on representations, statements, findings, or agreements is unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

(b) Reliance on advice of others. A practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances.

Reliance is not reasonable when--

(1) The practitioner knows or reasonably should know that the opinion of the other person should not be relied on;

(2) The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or

(3) The practitioner knows or reasonably should know that the other person has a conflict of interest in violation of the rules described in this part.

(c) Standard of review. (1) In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

(2) In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances, when determining whether a practitioner has failed to comply with this section.

(d) Federal tax matter. A Federal tax matter, as used in this section, is any matter concerning the application or interpretation of---

(1) A revenue provision as defined in Section 6110(i)(1)(B) of the Internal Revenue Code;

(2) Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax or obligation to file returns; or

(3) Any other law or regulation administered by the Internal Revenue Service.

(e) Effective/applicability date. This section is applicable to written advice rendered after June 12, 2014.

Observation
Written Tax Advice

In providing written advice concerning any Federal tax matter, you must (i) base your advice on reasonable assumptions, (ii) reasonably consider all relevant facts that you know or should know, and (iii) use reasonable efforts to identify and ascertain the relevant facts. You cannot rely upon representations, statements, findings, or agreements that are unreasonable or that you know to be incorrect, inconsistent, or incomplete. You must not take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit in evaluating a Federal tax matter (audit lottery). In providing your written advice, you may rely in good faith on the advice of another practitioner only if that advice is reasonable considering all facts and circumstances. You cannot rely on the advice of a person whom you know or should know is not competent to provide the advice or who has an unresolved conflict of interest as defined in §10.29.

SECTION 10.38 Establishment of Advisory Committees.

(a) Advisory committees.

To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least five individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and registered tax return preparers. Under procedures prescribed by the Internal Revenue Service, an advisory committee may review and make general recommendations regarding the practices, procedures, and policies of the offices described in §10.1.

(b) Effective date.

This section is applicable beginning August 2, 2011.

D. CIRCULAR 230: SUBPART C – SANCTIONS FOR VIOLATION OF THE REGULATIONS

Table of Contents (this subpart)

SECTION 10.50 Sanctions.

(a) Authority to censure, suspend, or disbar.

The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of Sec. 10.51), fails to comply with any regulation in this part (under the prohibited conduct standards of Sec. 10.52), or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) Authority to disqualify.

The Secretary of the Treasury, or delegate, after due notice and opportunity for hearing, may disqualify any appraiser for a violation of these rules as applicable to appraisers.

(1) If any appraiser is disqualified pursuant to this subpart C, the appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Internal Revenue Service pursuant to §10.81, regardless of whether the evidence or testimony would pertain to an appraisal made prior to or after the effective date of disqualification.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

(c) Authority to impose monetary penalty.

(1) In general.

(i) The Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under paragraph (a) of this section.

(ii) If the practitioner described in paragraph (c)(1)(i) of this section was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to the penalty, the Secretary of the Treasury, or delegate, may impose a monetary penalty on the employer, firm, or entity if it knew, or reasonably should have known, of such conduct.

(2) Amount of penalty. The amount of the penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty.

(3) Coordination with other sanctions. Subject to paragraph (c)(2) of this section.

(i) Any monetary penalty imposed on a practitioner under this paragraph (c) may be in addition to or in lieu of any suspension, disbarment or censure and may be in addition to a penalty imposed on an employer, firm or other entity under paragraph (c)(1)(ii) of this section.

(ii) Any monetary penalty imposed on an employer, firm or other entity may be in addition to or in lieu of penalties imposed under paragraph (c)(1)(i) of this section.

(d) Authority to accept a practitioner's consent to sanction. The Internal Revenue Service may accept a practitioner's office of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a).

(e) Sanctions to be imposed. The sanctions imposed by this section shall take into account all relevant facts and circumstances.

(f) Effective/applicability date. This section is applicable to conduct occurring on or after August 2, 2011, except that paragraphs (a), (b)(2), and (e) apply to conduct occurring on or after September 26, 2007, and paragraph (c) applies to prohibited conduct that occurs after October 22, 2004.

SECTION 10.51 Incompetence and disreputable conduct.

(a) Incompetence and disreputable conduct. Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to--

(1) Conviction of any criminal offense under the Federal tax laws.

(2) Conviction of any criminal offense involving dishonesty or breach of trust.

(3) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(4) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, and any other document or statement, written or oral, are included in the term "information."

(5) Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or any officer or employee thereof.

(6) Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

Observation
Personal Tax Compliance Responsibilities

You are responsible for insuring the timely filing and payment of your personal income tax returns and the tax returns for any entity over which you have, or share, control. Failing to file 4 of the last 5 years income tax returns, or 5 of the last 7 quarters of employment/excise tax returns is per se disreputable and incompetent conduct for which a practitioner may be summarily suspended, indefinitely. The willful evasion of the assessment or payment of tax is also conduct which violates Circular 230.

(7) Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(8) Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(9) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage, or by the bestowing of any gift, favor or thing of value.

(10) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(11) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

(12) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false or circulating or publishing malicious or libelous matter.

(13) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (a)(13) include those which reflect or

result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading. For purposes of this paragraph (a)(13), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

(14) Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(15) Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under §10.60.

(16) Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(17) Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

(18) Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

(b) Effective/applicability date. This section is applicable beginning August 2, 2011.

Case Study: Disreputable Conduct

While employed by a CPA firm, CPA prepared 17 income tax returns for clients who were not clients of the CPA firm. CPA used the employer's tax return preparation software and computer equipment to prepare these tax returns. CPA did not remove the employer's name from the paid preparer section of the tax returns prior to issuing these tax returns to clients. CPA billed the clients using invoices with CPA's name only and kept the fees received for these services.

CPA believed that these clients knew the CPA firm was not responsible for the tax returns even though the employer's name was displayed in the paid preparer section of the tax return.

Practice Pointer: Revised Regulations on Releasing Taxpayer Information

In 2008, the IRS released revised regulations concerning taxpayer privacy and the release of taxpayer information with an effective date of January 1, 2009. In 2013, Revenue Procedure 2013-14 was released, supplementing the regulations and providing additional guidance to tax return preparers regarding the form and content of taxpayer consents to disclose and consents to use tax return information, effective as of January 14, 2013. The effective date was extended to January 1, 2014 by Revenue Procedure 2013-19.

In general terms, a taxpayer's consent to each separate disclosure or separate use of tax return information must be contained on a separate written document, which can be furnished on paper or electronically. The consent may be included as an attachment to an engagement letter.

SECTION 10.52 Violation subject to sanction.

(a) A practitioner may be sanctioned under Sec. 10.50 if the practitioner

(1) Willfully violates any of the regulations (other than §10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of §10.51(a)(13)) violates §§10.34, 10.35, 10.36 or 10.37.

(b) Effective/applicability date. This section is applicable to conduct occurring on or after September 26, 2007.

SECTION 10.53 Receipt of information concerning practitioner.

(a) Officer or employee of the Internal Revenue Service.

If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report of the

suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests, and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(b) Other persons.

Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation, and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing this part.

(c) Destruction of report.

No report made under paragraph (a) or (b) of this section shall be maintained unless retention of such record is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule.

(d) Effect on proceedings under subpart D.

The destruction of any report will not bar any proceeding under subpart D of this part, but precludes the Director of the Office of Professional Responsibility's use of a copy of such report in a proceeding under subpart D of this part.

(e) Effective/applicability date. This section is applicable beginning August 2, 2011.

THE TAXPAYER BILL OF RIGHTS

In 2014, the IRS took administrative action to issue a Taxpayer Bill of Rights. While impressive looking on its face, the new Bill of Rights is simply a restatement of previously existing rights into a single document.

The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

CHAPTER 1: TEST YOUR KNOWLEDGE

The following questions are designed to ensure that you have a complete understanding of the information presented in the chapter (assignment). They are included as an additional tool to enhance your learning experience and do not need to be submitted in order to receive CPE credit.

We recommend that you answer each question and then compare your response to the suggested solutions on the following page(s) before answering the final exam questions related to this chapter (assignment).

1.	**Which of the following would be considered "practicing before the IRS" and subject to Circular 230:** **A.** an individual that participates in rulemaking **B.** a fiduciary **C.** a CPA representing a taxpayer **D.** an individual appearing on their own behalf
2.	**Under Circular 230 Section 10.27, a practitioner is prohibited from charging certain fees. Which of the following fees is prohibited:** **A.** fixed fees for specific routine services (e.g., $300 for a Form 1040A) **B.** a flat percentage fee based on the amount of refund on a Form 1040 **C.** hourly rates **D.** a range of fees for particular services with a higher fee charged for more complex situations
3.	**Circular 230 Section 10.30 places numerous restrictions on solicitation and advertising. Which of the following is correct:** **A.** a copy of all direct mail advertisements must be retained for at least 36 months **B.** hourly fee information must be included in all advertisements **C.** although ads may include a fee schedule, rates can be changed at any time **D.** when accepting a new client, the practitioner must give the client a good faith estimate of the cost of the services contemplated

4.	**Circular 230 Section 10.50 authorizes the Secretary of the Treasury to do which of the following:** **A.** to impose monetary penalties on practitioners **B.** to censure, suspend, or disbar practitioners **C.** to disqualify appraisers **D.** all of the above

CHAPTER 1: SOLUTIONS AND SUGGESTED RESPONSES

Below are the solutions and suggested responses for the questions on the previous page(s). If you choose an incorrect answer, you should review the pages as indicated for each question to ensure comprehension of the material.

1.	**A.** Incorrect. Section 10.7 of Circular 230 states that individuals participating in rulemaking are not considered "practicing before the IRS." **B.** Incorrect. A fiduciary is considered to be the taxpayer and not a representative of the taxpayer. Therefore, they are not "practicing before the IRS." **C.** **CORRECT**. A CPA representing a taxpayer would be considered "practicing before the IRS." **D.** Incorrect. Provided an individual can present satisfactory identification, individuals may appear on their own behalf before the IRS and not have it considered "practicing before the IRS."
2.	**A.** Incorrect. Circular 230 Section 10.27 does not limit a practitioner's ability to charge fixed fees for specific routine services. **B.** **CORRECT**. A practitioner charging a flat percentage fee based on the amount of refund on a Form 1040 is an example of the type of contingent fee prohibited in Circular 230 Section 10.27. **C.** Incorrect. Hourly rates are not limited by Circular 230 Section 10.27. **D.** Incorrect. Practitioners are not prohibited from charging different rates depending on the complexity of the issue.
3.	**A.** **CORRECT**. Circular 230 Section 10.30 requires the practitioner to retain a copy of the actual communication from a direct mail advertisement for a period of at least 36 months from the date of the last use. **B.** Incorrect. Hourly fees may be, but are not required to be, included in all advertisements. **C.** Incorrect. Circular 230 Section 10.30 restricts a practitioner from changing the schedule of fees within 30 calendar days of the last date on which the schedule was published. **D.** Incorrect. Circular 230 Section 10.30 does not mandate the use of good faith estimates when practitioners meet prospective clients.

4.	**A.** Incorrect. Circular 230 Section 10.50 authorizes the Secretary of the Treasury to impose monetary penalties on practitioners that have been sanctioned. However, this is not the only correct selection. **B.** Incorrect. The Secretary of the Treasury may censure, suspend or disbar any practitioner from practice before the IRS if the practitioner is shown to be incompetent or disreputable, but this is not the only selection that is correct. **C.** Incorrect. Circular 230 Section 10.50 gives the Secretary of the Treasury the authority to disqualify appraisers, but this is not the only correct selection listed. **D.** **CORRECT**. Circular 230 Section 10.50 gives the Secretary of the Treasury the authorization to censure, suspend or disbar practitioners, to disqualify appraisers, and to impose monetary penalties.

CHAPTER 2: STATEMENTS ON STANDARDS FOR TAX SERVICES

Chapter Objectives

After completing this chapter, you should be able to:

- Identify the CPA's responsibilities according to the AICPA's Statements on Standards for Tax Services.

I. STATEMENTS ON STANDARDS FOR TAX SERVICES

Explanation of the Revisions to the SSTSs (Effective January 1, 2024)

The goals of the revisions to the SSTSs were to ensure that the standards are better aligned to reflect the current state of the tax profession and to address the emerging needs of today's members. Updates to the standards included the following:

- Reorganization of the SSTSs by type of tax work performed
- Promulgation of three new standards surrounding data protection, reliance on tools, and the representation of tax clients before taxing authorities

Reorganization

The task force included in its efforts to update the SSTSs a new practice-based organizational structure for the standards. Under the new organizational framework:

- SSTS No. 1 includes general tax guidance with broad applicability (includes new standards on data protection and reliance on tools).
- SSTS No. 2 includes tax return preparation guidance.
- SSTS No. 3 includes guidance specific to providing tax advice.
- SSTS No. 4 includes guidance for members providing tax representation services (new standard).

The task force believed that the existing SSTSs were largely applicable to all types of tax services and were drafted to be general in nature to allow for their use no matter what type of tax service was being delivered. At the time of the drafting of the original standards, most of the tax services being provided were compliance-oriented and involved tax return preparation.

The revision project reorganized the SSTSs so that most of the existing standards have been incorporated into either general standards (SSTS No. 1) or compliance standards (SSTS No. 2). Because the new

SSTSs around data protection and reliance on tools are applicable to different types of tax services, they were also included with the general standards. The existing standard related to tax advisory services (SSTS No. 3) and the new standard related to representation services (SSTS No. 4) were determined to be unique and have been separately stated. This alignment is intended to assist members in applying standards to specific tax practice situations and to help them understand the scope and expectations of these standards.

Data Protection

The subject of the protection of taxpayer data has exponentially grown over time and has gained global importance as technology now allows for the transfer and storage of large amounts of confidential financial information with the simple press of a button. In many cases, this data is never seen in a hard copy format. The task force believed it was important to implement a standard which ensures members adopt reasonable safeguards to protect taxpayer data, both in electronic format and otherwise.

The task force also recognized that constant advances in technology make it challenging to identify any one set of standards with broad applicability across all tax practices. The purpose of the new standard is to expressly state a member's responsibility to make a reasonable effort to safeguard confidential client information. It was broadly written to consider the variability among member practices as well as continuingly changing privacy laws and technology.

Reliance on Tools

Tax is not a static subject, given regular changes resulting from various legislative and regulatory amendments, and judicial decisions. However, over time, these changes have become more frequent, extensive, and complex, with related authoritative guidance from the taxing authorities often delayed or incomplete. This situation often leaves members struggling to (1) provide clients or firm departments the necessary information to allow the correct and accurate preparation and filing of their respective tax returns and (2) plan for future events to efficiently manage potential tax liabilities.

Members have long relied on tools of various types to allow them to accurately interpret a particular provision of the tax code. However, in today's tax practice environment, members rely on technology to provide services more than at any point in history. That trend will continue with the introduction of artificial intelligence, data science, quantum computers, and other developing technologies.

Currently, tax professionals do not have a professional standard relating specifically to reliance on these tools when providing services. The task force identified the need for a standard that protects members by defining when they may reasonably rely on tools of all types used in the performance of tax services.

Tax Representation

As previously noted, the best practices that were the forerunners of the existing SSTSs were written over 50 years ago. At that time, tax preparation was the overwhelming service provided by tax professionals. Since then, tax practices have expanded to provide a wide variety of services, including tax representation services. The task force believed the continuing growth in the number of CPA firms providing tax representation services, in various venues, involving different types of taxes, obligated the development of this standard.

Other Concerns

Another goal of the task force was to avoid proposing standards that might appear duplicative of other existing standards currently in effect. Although it is true that CPAs who provide tax services are bound by existing standards related to representation, including Circular 230, such rules may be limited in scope (for example, Circular 230 only governs representation before the IRS).

A. SSTS No. 1: General Standards for Members Providing Tax Services

1.1. Advising on Tax Positions

Introduction

1.1.1. This section defines tax positions and sets forth the general standards for members advising on tax positions. Standards related to tax return positions are contained in section 2.1, "Tax Return Positions," of Statement on Standards for Tax Services (SSTS) No. 2, *Standards for Members Providing Tax Compliance Services, Including Tax Return Positions*.

1.1.2. This section also addresses a member's obligation to advise a taxpayer of relevant tax disclosure responsibilities and potential penalties.

1.1.3. In addition to the AICPA, applicable taxing authorities may impose specific reporting and disclosure standards with regard to advising on tax positions. These standards can vary between taxing authorities and by type of tax.

Standard

1.1.4. A tax position is a conclusion reached when applicable tax law, regulations, case law, or other regulatory or recognized guidance is applied to a particular transaction, a specific set of facts and circumstances, or a controversy.

1.1.5. A member should determine and comply with the standards, if any, that are imposed by the applicable taxing authority with respect to advising on tax positions.

a. If the applicable taxing authority has no promulgated standards regarding advising on tax positions, a member should not advise a taxpayer to take a tax position unless the member has a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits, if challenged.

b. If the applicable taxing authority has written standards that exceed the realistic possibility standard described in paragraph 1.1.5a, the member should comply with those taxing authority standards.

c. Notwithstanding paragraph 1.1.5a and b, a member may, as permitted by a taxing authority, advise a taxpayer to take a tax position in which the member:

(i). concludes that there is a reasonable basis for the position, and

(ii). advises the taxpayer to appropriately disclose that position to the taxing authorities.

1.1.6. A member should exercise due diligence and professional judgment when advising on tax positions for a particular situation.

1.1.7. When advising on a tax position, a member has the right to be an advocate for the taxpayer regarding a position satisfying the aforementioned standards.

Explanations

1.1.8. The AICPA and various taxing authorities impose specific standards regarding tax positions. In a given situation, the standards, if any, imposed by the applicable taxing authority may be higher or lower than the standards set forth in paragraph 1.1.5. A member should comply with the standards, if any, of the applicable taxing authority; if the applicable taxing authority has no standards or if its standards are lower than the standards set forth in paragraph 1.1.5, the standards set forth in paragraph 1.1.5 will apply.

1.1.9. In addition to a duty to the taxpayer, a member has a duty to the tax system. However, it is well-established that the taxpayer has no obligation to pay more taxes than are legally owed, and a member has a duty to the taxpayer to assist in achieving that result or any other legally valid tax outcome the taxpayer desires. The standards contained in paragraph 1.1.5 recognize a member's responsibilities to both the taxpayer and the tax system.

1.1.10. When attempting to reach a conclusion about whether a given standard in paragraph 1.1.5 has been satisfied regarding a particular jurisdiction, a member may consider a well-reasoned construction of the applicable statute and related regulations of that jurisdiction, if any. In addition, well-reasoned articles, treatises, or guidance issued by the applicable taxing authority (regardless of whether such sources would be treated as authority under *IRC Section 6662*, Imposition of accuracy-related penalty on underpayments) and the regulations thereunder may also be considered. A position would not fail to meet these standards merely because the position is later abandoned for practical or procedural considerations during an administrative hearing or in the litigation process.

1.1.11. If a member has a good-faith belief that more than one tax position meets the standards set forth in paragraph 1.1.5, a member's advice concerning alternative acceptable positions may include a discussion of the likelihood that each such position might or might not be challenged by the taxing authority.

1.1.12. If particular facts and circumstances lead a member to believe that a taxpayer penalty might be asserted, the member should advise the taxpayer and should discuss with the taxpayer the opportunity, if any, to avoid such penalty by appropriate disclosure to the taxing authority. A member should also advise the taxpayer that it is the taxpayer's responsibility to decide whether and how to disclose.

1.2. Knowledge of Errors

Introduction

1.2.1. This section sets forth the applicable standards for a member who becomes aware of:

a. an error in a taxpayer's previously filed tax return;

b. an error in a return that is the subject of an administrative proceeding, such as an examination by a taxing authority or an appeals conference;

c. a taxpayer's failure to file a required tax return; or

d. an error in a tax representation engagement.

1.2.2. As used herein, the term *error* includes any position, omission, or method of accounting that, at the time a position is recommended or a return is filed, fails to meet the standards set out in sections 1.1, "Advising on Tax Positions," or 2.1 "Tax Return Positions." The term error also includes a position taken on a prior-year's return that no longer meets these standards due to legislation, judicial decisions, or administrative pronouncements having retroactive effect. However, an error does not include an item that has an insignificant effect on the taxpayer's tax liability (see paragraph 1.2.16). The term *administrative proceeding* does not include a criminal proceeding.

1.2.3. This section applies regardless of whether the member prepared or signed a return that contains the error.

1.2.4. In addition to the AICPA, applicable taxing authorities may impose specific standards regarding errors discovered during the provision of tax services by a member. These standards can vary between taxing authorities and by type of tax.

1.2.5. Special considerations may apply when legal counsel engages a member to provide assistance in a matter relating to a taxpayer.

Standard

1.2.6. A member should promptly inform a taxpayer upon becoming aware of the taxpayer's failure to file a required return, an error in a previously filed return, an error in a return that is the subject of an administrative proceeding, an error in an administrative filing (such as a ruling request, accounting method change, and so on), an error in a tax representation engagement, or an error in advice provided if discovered by the member while providing services for the taxpayer. A member also should advise the taxpayer of the potential consequences of the error and advise on corrective measures to be taken. Such advice may be given orally. See also paragraph 3.1.3 regarding the documentation of advice.

1.2.7. If a member prepares a tax return for the current year or a prior tax year, and the taxpayer has not taken appropriate action to correct an error related to a tax return position in a tax return for a prior year, the member should consider whether to withdraw from preparing the current return and whether to continue a professional or employment relationship with the taxpayer. If the member does prepare the current-year return, the member should take reasonable steps to ensure that the error is not repeated.

1.2.8. A member is not allowed to inform a taxing authority of an error without the taxpayer's permission, except when required by law. Members also should consider whether they can continue a professional relationship with a taxpayer who refuses to properly mitigate a discovered error.

1.2.9. If a member believes that a taxpayer may face possible exposure to allegations of fraud or other criminal misconduct, the member should promptly advise the taxpayer to consult with an attorney before the taxpayer takes any action. The member should also consider consulting with the member's legal counsel before deciding whether to provide advice to the taxpayer and whether to continue a professional or employment relationship with the taxpayer.

Explanations

1.2.10. If a member becomes aware of an error while performing tax services, the member's responsibility is to advise the taxpayer of the existence of the error. The member should advise the taxpayer of the error and the potential consequences and advise on corrective measures to be taken, if any. If the member does not prepare the taxpayer's tax return or was not the provider of the advice, the member may instead advise that the error be discussed with the taxpayer's tax return preparer or adviser. Similarly, when representing the taxpayer before a taxing authority in an administrative proceeding about a return containing an error of which the member is aware, the member should advise the taxpayer to disclose the error to the taxing authority and of the potential consequences of not disclosing the error. Refer to paragraph 3.1.3 for considerations regarding the decision to provide such advice in oral or written form.

1.2.11. It is the taxpayer's responsibility to decide whether to correct an error. If the taxpayer does not correct an error, a member should consider whether to withdraw from the engagement and whether to continue a professional or employment relationship with the taxpayer.

1.2.12. Once the member has obtained the taxpayer's consent to disclose an error in an administrative proceeding, the disclosure should not be delayed to such a degree that the taxpayer or member might be considered to have failed to act in good faith or to have, in effect, provided misleading information. In any event, disclosure should be made before the conclusion of the administrative proceeding.

1.2.13. Members have a responsibility to both the taxpayer and the tax system. Discovery of an error in an administrative proceeding or filing, such as a ruling request, might negate the effect of the ruling if not disclosed to the authority. Failure to comply with statutory or regulatory compliance requirements affects not only the taxpayer but also the tax system.

1.2.14. A conflict between the member's interests and those of the taxpayer may be created by, for example, the potential for violating the "Confidential Client Information Rule" (ET sec. 1.700.001) of the AICPA Code of Professional Conduct (relating to the member's confidential client relationship); the tax law and regulations; or laws on privileged communications, as well as by the potential adverse impact on a taxpayer of a member's withdrawal. Therefore, a member should consider consulting with the member's legal counsel before deciding whether to provide advice to the taxpayer and whether to continue a professional or employment relationship with the taxpayer.

1.2.15. If a member decides to continue a professional or employment relationship with the taxpayer and is requested to prepare a tax return for a year subsequent to that in which an error occurred, the member

should take reasonable steps to ensure that the error is not repeated. If the subsequent year's tax return cannot be prepared without perpetuating the error, the member should consider withdrawal from the return preparation. If a member learns that the taxpayer is using an erroneous method of accounting and it is past the due date to request permission to change to a method meeting the standards of paragraph 2.1.1, the member may sign a tax return for the current year, provided that the tax return includes appropriate disclosure of the use of the erroneous method.

1.2.16. Whether an error has no more than an insignificant effect on the taxpayer's tax liability is left to the member's professional judgment, based on all the facts and circumstances known to the member. In judging whether an erroneous method of accounting has more than an insignificant effect, a member should consider the method's cumulative effect, as well as its effect on the tax advice provided, current-year's tax return, or the tax return that is the subject of the administrative proceeding.

1.3. Data Protection

Introduction

1.3.1. This section sets forth the applicable standards for a member's responsibilities related to the protection of taxpayer data obtained in the course of rendering services for a taxpayer. Because technology, laws, guidance, and practice concerning data protection are constantly changing, this section purposefully does not include bright-line rules.

1.3.2. A member's responsibility to protect taxpayer information is a well-established professional responsibility. The increasing use of technology by individuals and businesses, together with a growing awareness of data breaches and identity theft, has resulted in a growing sensitivity toward and need to focus on the protection of taxpayer data, including electronic data.

1.3.3. This section complements, and does not alter or replace, the confidentiality standards established in the "Confidential Client Information Rule" (ET sec. 1.700.001) and the interpretations thereunder.

Standard

1.3.4. A member should make reasonable efforts to safeguard taxpayer data, including data transmitted or stored electronically.

1.3.5. A member should consider applicable privacy laws when collecting and storing taxpayer data.

Explanations

1.3.6. This section uses the term reasonable, knowing that actions or behaviors considered "reasonable" may differ over time, among members, and from firm to firm based on size and resources.

1.3.7. Appropriate safeguards should be implemented to protect both member and taxpayer data stored within the member's information systems platform. Appropriate safeguards should be based on current recommended practices and may, for example, include the installation and use of commercial security software to prevent unwanted or unauthorized access to information, encryption of data that is sent between multiple parties over the internet, the use of secure networks, strong password policies, use of firewalls, and use of secure data sharing and collaboration platforms. Also, a member should consider

other industry standards, such as the AICPA's Privacy Management Framework and *2017 Trust Services Criteria for Security, Availability, Processing, Integrity, Confidentiality, and Privacy (with Revised Points of Focus – 2022)* when developing a privacy program.

1.3.8. Members may use electronic tools owned and hosted by others, such as tax return preparation software, or may outsource certain tasks, such as converting paper documents to electronic information. Members should make reasonable efforts to confirm that taxpayer information properly shared with others in the course of providing a service is appropriately protected.

1.3.9. A member should take reasonable steps to limit the amount of confidential taxpayer information in the member's files. For example, the member may request only the information necessary to perform the services for which the member is being engaged or otherwise approved to perform by the taxpayer. The member, subject to any applicable retention requirements, may also decide to delete, return, or redact any confidential taxpayer information that is unnecessary to complete the services. This may also include, when appropriate, asking the client to mask any personally identifiable information (PII) or personal health information (PHI) prior to transmission to the member if such information is not required for the services being performed. Additionally, adherence to appropriate document retention and destruction policies can help to ensure that taxpayer data is properly removed from a member's information systems once it is no longer needed under the respective statute of limitations or the member's document retention policies.

1.3.10. In developing safeguards, members should also consider steps to be taken in the event of a data breach, including compliance with notification obligations. For example, the Federal Trade Commission (FTC) provides recommendations that include securing systems and fixing issues that are attributed to the breach. Members should consider forming a plan to quickly respond to those affected by the breach and notify appropriate authorities of the breach as required by law.

1.3.11. Members should consider applicable privacy laws. For example, the Financial Services Modernization Act of 1999 (also referred to as the Gramm-Leach-Bliley Act [GLBA]), requires professional tax return preparers to ensure the security and confidentiality of customer (that is, taxpayer) financial information. As part of the implementation of the GLBA, the FTC issued the Safeguards Rule, which requires tax return preparers to develop and implement a written information security plan to protect client data. Failure to do so may result in an FTC investigation. When developing this plan, the member may consider the relative firm size and complexity of services provided. Additionally, under this rule, tax return preparers are responsible for taking steps to ensure that their affiliates and service providers safeguard taxpayer information in their care. As with many privacy laws, the FTC has subsequently updated the rule to keep pace with technology, and members should periodically review applicable privacy laws to keep abreast of applicable rules.

1.3.12. A member should have general knowledge of the current security expectations of taxing authorities and other applicable regulatory authorities. Data security is a topic addressed in various tax resources, in tax research databases and related publications, and by taxing authorities. For example, at the time of this writing, the IRS has a website with links to various publications and other information related to data protection. Members are not expected to become experts in this area, but it is reasonable

to expect that members would familiarize themselves with the information made generally available to tax professionals on the subject, including those referenced in paragraph 1.3.7.

1.3.13. Training is a vital component of any data protection plan. A member should make reasonable efforts to ensure that all nonmember personnel that the member supervises are trained and informed about data protection. For example, staff should be informed about how to recognize phishing emails and the dangers of opening or downloading attachments from unknown senders.

1.4. Reliance on Tools

Introduction

1.4.1. This section sets forth the applicable standards for members when relying on tools in the provision of tax services, including, but not limited to, the preparation of a tax return, tax consulting services, and tax representation services.

1.4.2. For purposes of this section, a tool is a resource used in the provision of tax services. Tools include, but are not limited to, tax preparation software, tax research publications (paper or electronic), tax-related calculation aids, tax planning software, state and local tax aids, online data search engines, data analytics, statistical models, artificial intelligence, and relevant professional publications and resources.

Standard

1.4.3. A member should exercise appropriate professional judgment and professional care when relying on a tool.

1.4.4. A member may reasonably rely on tools used in providing tax services to a taxpayer. Use of a tool does not absolve the member of professional obligations under AICPA or other applicable ethical standards.

Explanations

1.4.5. Tools developed for use in the provision of tax services provide significant benefits to members. It is generally a best practice of a member to rely on such tools to a certain extent to improve efficiency and client service.

1.4.6. The source of the tools must be considered when determining the appropriate level of reliance on that tool. For example, subscription- based tax research tools and resources may have more weight than articles from independent internet sources.

1.4.7. A member who employs tools in providing tax services remains responsible for the completed work product in accordance with the various other standards contained in the SSTSs. Accordingly, members should take reasonable steps to determine that the tools used are appropriate for the intended purpose.

1.4.8. Tools should be used to enhance or improve the member's understanding of a tax issue, not to supplant the member's professional judgment. For example, when preparing Form 1040, U.S. Individual Income Tax Return, a member must still attest under penalties of perjury that, to the best of the preparer's

knowledge and belief, the return and accompanying schedules are true, correct, and complete. That responsibility cannot be transferred entirely to reliance on a tool.

B. SSTS No. 2: Standards for Members Providing Tax Compliance Services, Including Tax Return Positions

2.1. Tax Return Positions

Introduction

2.1.1. This section sets forth the applicable standards for members preparing or signing tax returns (including amended returns, claims for refund, and information returns) filed with any taxing authority.

2.1.2. Additional standards apply to tax positions that a member advises on. Refer to section 1.1, "Advising on Tax Positions," of Statement on Standards for Tax Services (SSTS) No. 1, General Standards for Members Providing Tax Services. When signing or preparing a tax return that includes a tax position advised on by a third party, the member should also refer to section 2.3, "Reliance on Information From Others."

2.1.3. For purposes of this section, preparation of a tax return includes giving advice on events that have occurred at the time the advice is given if the advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a tax return.

2.1.4. This section also addresses a member's obligation to advise a taxpayer of relevant tax return disclosure responsibilities and potential penalties.

Standard

2.1.5. A tax return position is a tax position (as defined in paragraph 1.1.4 of SSTS No. 1) that is reflected on a tax return prepared by a member or for which a member signs as preparer.

2.1.6. A member should determine and comply with the standards, if any, that are imposed by the applicable taxing authority with respect to preparing or signing a tax return.

a. If the applicable taxing authority has no written standards with respect to preparing or signing a tax return, a member should not prepare or sign the tax return unless the member has a good-faith belief that the tax return position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged.

b. If the applicable taxing authority has written standards that exceed the realistic possibility standard described in paragraph 2.1.6a, the member should comply with those taxing authority standards.

c. Notwithstanding paragraph 2.1.6a and b, a member may, as permitted by a taxing authority, prepare or sign a tax return, which includes a tax return position in which:

(i). the member concludes there is a reasonable basis for the tax return position, and

(ii). the position is appropriately disclosed to the taxing authorities.

2.1.7. When preparing or signing a tax return on which a tax return position is taken, a member should, when relevant, advise the taxpayer regarding potential penalty consequences of such tax return position and the opportunity, if any, to avoid such penalties through disclosure.

2.1.8. A member should not advise a taxpayer to take a tax return position or prepare or sign a tax return reflecting a tax return position that the member knows:

a. exploits the audit selection process of a taxing authority, or

b. serves only as an arguing position advanced solely to obtain leverage in a negotiation with a taxing authority.

2.1.9. A member may rely, in good faith, on others' proposed tax positions regarding the issues being considered, provided the member is satisfied that the standards in section 2.3 are satisfied.

Explanations

2.1.10. The AICPA and various taxing authorities impose specific reporting and disclosure standards regarding tax return positions and preparing or signing tax returns. In a given situation, the standards, if any, imposed by the applicable taxing authority may be higher or lower than the standards set forth in paragraph 2.1.6. A member should comply with the standards, if any, of the applicable taxing authority. If the applicable taxing authority has no standards or if its standards are lower than the standards set forth in paragraph 2.1.6, the standards set forth in paragraph 2.1.6 will apply.

2.1.11. Our self-assessment tax system can function effectively only if taxpayers file tax returns that are true, correct, and complete. A tax return is prepared based on a taxpayer's representation of facts, and the taxpayer has the final responsibility for positions taken on the return.

2.1.12. When attempting to reach a conclusion about whether a given standard in paragraph 2.1.6 has been satisfied, a member may consider a well-reasoned construction of the applicable statute and related regulations, if any. In addition, well-reasoned articles, treatises, or pronouncements issued by the applicable taxing authority (regardless of whether such sources would be treated as authority under IRC Section 6662, Imposition of accuracy-related penalty on underpayments) and the regulations thereunder may also be considered. A position would not fail to meet these standards merely because it is later abandoned for practical or procedural considerations during an administrative hearing or in the litigation process.

2.1.13. If a member has a good-faith belief that more than one tax return position meets the standards set forth in paragraph 2.1.6, a member's advice concerning alternative acceptable positions may include a discussion of the likelihood that each such position might or might not cause the taxpayer's tax return to be examined and whether the position would be challenged in an examination. In these circumstances, such advice is not a violation of paragraph 2.1.6.

2.1.14. A member's advising on whether information is appropriately disclosed by the taxpayer should be based on the facts and circumstances of the particular case and the disclosure requirements of the

applicable taxing authority. If a member advising on a tax position, but not engaged to prepare or sign the related tax return, advises the taxpayer concerning appropriate disclosure of the position, then the member shall be deemed to meet the disclosure requirements of these standards.

2.1.15. If particular facts and circumstances lead a member to believe that a taxpayer penalty might be asserted, the member should advise the taxpayer and discuss with the taxpayer the opportunity, if any, to avoid such penalty by disclosing the position on the tax return. A member should also advise the taxpayer that it is the taxpayer's responsibility to decide whether and how to disclose. If the member believes disclosure of a position is required and the taxpayer chooses not to disclose the position, the member should consider whether to continue a professional or employment relationship with the taxpayer.

2.2. Tax Return Questions

Introduction

2.2.1. This section sets forth the applicable standards for members when signing the preparer's declaration on a tax return if one or more questions on the return have not been answered. The term questions includes requests for information on the return, in the instructions, or in the regulations, regardless of whether it is stated in the form of a question.

Standard

2.2.2. Before signing as preparer, a member should take reasonable steps to obtain from the taxpayer the information necessary to provide appropriate answers to all required questions on a tax return.

Explanations

2.2.3. Taxing authorities ask a variety of questions on tax returns to elicit information from taxpayers that will be filing a specific form. As a result, questions on tax returns are not of uniform importance and may not be applicable to a particular taxpayer. Members should consult with taxpayers to determine if tax return questions do apply and what appropriate answers should be included when filing the return.

2.2.4. In determining whether a tax return question is applicable to specific taxpayers, a member should consider whether:

a. omitting an answer to a question may affect the completeness of a return in determining taxable income or loss, or the tax liability shown on the return.

b. a request for information may require a disclosure necessary for a complete return or to avoid penalties.

c. not answering the question could prevent the member from being able to sign the commonly required preparer declaration stating that the return, to the best of the member's knowledge and belief, is true, correct, and complete.

2.2.5. Reasonable grounds may exist for omitting an answer to a question applicable to a taxpayer. For example, reasonable grounds may include the following:

a. The information is not readily available and the answer is not significant in terms of its impact on taxable income or loss, or the tax liability shown on the return.

b. Genuine uncertainty exists regarding the meaning of a question in relation to the particular return or whether the question applies to the taxpayer.

c. The information requested is voluminous; in such cases, a statement should be made on the return that the information will be supplied upon request.

2.2.6. A member should not omit an answer merely because it might prove disadvantageous to a taxpayer.

2.2.7. A member should consider whether the omission of an answer to a question may cause the return to be deemed incomplete or result in penalties, and advise the taxpayer accordingly.

2.2.8. If reasonable grounds exist for omission of an answer to an applicable question, a member is not required to advise the taxpayer to include an explanation of the reason for omission on the return.

2.3. Reliance on Information From Others

Introduction

2.3.1. This section sets forth the applicable standards for members concerning the obligation to examine or verify certain supporting data or to consider information related to another taxpayer when preparing a taxpayer's tax return.

Standard

2.3.2. When preparing or signing a return, or a portion of a return, a member may, in good faith, rely on information furnished, without verification, by the taxpayer or by third parties. However, a member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to the member. A member should consider one or more of the taxpayer's prior-year tax returns, or a portion of a return, whenever feasible.

2.3.3. If the tax law or regulations impose a condition regarding deductibility or other tax treatment of an item, a member should make reasonable inquiries to determine, to the member's satisfaction, whether such condition has been met.

2.3.4. When preparing a tax return, a member should consider relevant information actually known by that member from other sources, including the tax return of another taxpayer. When using such information, a member should consider any limitations imposed by any law or rule relating to confidentiality.

Explanations

2.3.5. The preparer's declaration on a tax return often states that the information contained therein is true, correct, and complete to the best of the preparer's knowledge and belief based on all information known by the preparer. This type of reference should be understood to include information furnished by the taxpayer or by third parties to a member in connection with the preparation of the return.

2.3.6. The preparer's declaration does not require a member to examine or verify supporting data; a member may rely on information furnished by the taxpayer unless it appears to be incorrect, incomplete, or inconsistent. However, there is a need to determine by inquiry that a specifically required condition, such as maintaining books and records or substantiating documentation, has been satisfied and to obtain information when the material furnished appears to be incorrect, incomplete, or inconsistent. Although a member has certain responsibilities in exercising due diligence in preparing a return, the taxpayer has the ultimate responsibility for the contents of the return. Thus, if the taxpayer presents unsupported data in the form of lists of tax information, such as dividends and interest received, charitable contributions, and medical expenses, such information may be used in the preparation of a tax return without verification unless it appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to a member.

2.3.7. Even though there is no requirement to examine underlying documentation, a member should encourage the taxpayer to provide supporting data where appropriate. For example, a member should encourage the taxpayer to submit underlying documents for use in tax return preparation to permit full consideration of income and deductions arising from security transactions and from pass-through entities, such as estates, trusts, partnerships, and S corporations.

2.3.8. The source of information provided to a member by a taxpayer for use in preparing the return is often a pass-through entity, such as a limited partnership, in which the taxpayer has an interest but is not involved in management. A member may accept the information provided by the pass-through entity without further inquiry, unless there is reason to believe it is incorrect, incomplete, or inconsistent, either on its face or on the basis of other facts known to the member. In some instances, it may be appropriate for a member to advise the taxpayer to ascertain the nature and amount of possible exposure to tax deficiencies, interest, and penalties by taxpayer contact with management of the pass-through entity.

2.3.9. A member should make use of a taxpayer's returns for one or more prior years in preparing the current return whenever feasible. Reference to prior returns and discussion of prior-year tax determinations with the taxpayer often provides information to determine the taxpayer's general tax status, avoid the omission or duplication of items, and afford a basis for the treatment of similar or related transactions. As with the examination of information supplied for the current-year's return, the extent of comparison of the details of income and deduction between years depends on the particular circumstances.

2.4. Use of Estimates

Introduction

2.4.1. This section sets forth the applicable standards for members when using the taxpayer's estimates in the preparation of a tax return. Appraisals or valuations are not considered estimates for purposes of this section. The accuracy of the estimate is the responsibility of the taxpayer.

Standard

2.4.2. Unless prohibited by statute, administrative rule, or judicial holdings, a member may use estimates, whether from the taxpayer or other sources authorized by the taxpayer as permitted in section 2.3, in

the preparation of a tax return if it is not practical to obtain exact data and if the member determines that the estimates are reasonable based on the facts and circumstances known to the member. Estimates should be presented in a manner that does not imply greater accuracy than exists.

Explanations

2.4.3. Accounting requires the exercise of professional judgment and, in many instances, the use of approximations based on judgment. The application of such accounting judgments, as long as they are not in conflict with rules set forth by a taxing authority, is acceptable. These judgments are not estimates within the purview of this section. For example, a federal income tax regulation provides that if all other conditions for accrual are met, the exact amount of income or expense need not be known or ascertained at year-end if the amount can be determined with reasonable accuracy.

2.4.4. When the taxpayer's records do not accurately reflect information related to small expenditures, accuracy in recording some data may be difficult to achieve. Therefore, the use of estimates by a taxpayer in determining the amount to be deducted for such items may be appropriate.

2.4.5. When records are missing or precise information about a transaction is not available at the time the return must be filed, a member may prepare a tax return using a taxpayer's estimates of the missing data. The member should inform the taxpayer of the taxpayer's duty to maintain records that support the return.

2.4.6. Estimated amounts should not be presented in a manner that provides a misleading impression about the degree of factual accuracy.

2.4.7. Specific disclosure that an estimate is being used for an item in the return is not generally required; however, such disclosure should be made in unusual circumstances in which nondisclosure might mislead the taxing authority about the degree of accuracy of the return as a whole. Examples of unusual circumstances include the following:

a. A taxpayer has died or is ill at the time the return must be filed.

b. A taxpayer has not received a Schedule K-1 for a pass-through entity at the time the tax return is to be filed.

c. Litigation is pending (for example, a bankruptcy proceeding) that bears on the return.

d. Fire, technology issues, or a natural disaster has destroyed the relevant records.

2.5. Departure From Previous Positions

Introduction

2.5.1. This section sets forth the applicable standards for members when advising on a tax return position that departs from the position determined in an administrative proceeding or in a court decision with respect to the taxpayer's prior return.

2.5.2. For purposes of this section, an administrative proceeding includes an examination by a taxing authority or an appeals conference relating to a return or claim for refund.

2.5.3. For purposes of this section, court decision means a decision by any court having jurisdiction over tax matters.

Standard

2.5.4. Unless the taxpayer is bound to a specified treatment of a tax return position in a later tax year, the member may advise on a tax return position or prepare or sign a tax return that departs from the treatment of an item as concluded in an administrative proceeding or court decision with respect to a prior return of the taxpayer, provided the requirements of section 2.1, "Tax Return Positions," are satisfied.

Explanations

2.5.5. If an administrative proceeding or court decision has resulted in a determination concerning a specific tax treatment of an item in a prior-year's return, a member will usually advise this same tax treatment in subsequent years. However, unless the taxpayer is contractually bound to a particular tax treatment, departures from consistent treatment may be justified under such circumstances as the following:

a. Taxing authorities tend to act consistently in the disposition of an item that was the subject of a prior administrative proceeding but generally are not bound to do so. Similarly, a taxpayer is not bound to follow the tax treatment of an item as consented to in an earlier administrative proceeding.

b. The determination in the administrative proceeding or the court's decision may have been caused by a lack of documentation. Supporting data for the later year may be appropriate.

c. A taxpayer may have yielded in the administrative proceeding for settlement purposes or may not have appealed the court decision, even though the position met the standards in section 2.1.

d. Court decisions, rulings, or other authorities that are more favorable to a taxpayer's current position may have developed since the prior administrative proceeding was concluded or the prior court decision was rendered.

2.5.6. The consent in an earlier administrative proceeding and the existence of an unfavorable court decision are factors that the member should consider in evaluating whether the standards in section 2.1 are met.

C. SSTS No. 3: Standards for Members Providing Tax Consulting Services

Introduction

3.1.1. This Statement on Standards for Tax Services (SSTS) sets forth the applicable standards for members regarding certain aspects of providing tax advice to a taxpayer and considers the circumstances in which a member is responsible for communicating with a taxpayer when subsequent developments affect advice previously provided.

Standard

3.1.2. A member should use professional judgment to ensure that tax advice provided in a tax consulting engagement is competent and based on applicable standards. For this purpose, competence follows the "Competence" interpretation (ET sec. 1.300.010) of the AICPA Code of Professional Conduct, as well as any other applicable standards.

3.1.3. A member may communicate tax advice orally or in writing. When communicating tax advice in writing, a member should comply with relevant taxing authorities' standards, if any, applicable to written tax advice. A member should use professional judgment about any need to document oral advice. A member is not required to follow a standard format when communicating or documenting oral and written advice.

3.1.4. A member should assume that tax advice provided to a taxpayer will affect the manner in which the matters or transactions considered would be reported or disclosed on the taxpayer's tax returns. Therefore, for tax advice given to a taxpayer, a member should consider, when relevant:

a. return reporting and disclosure standards applicable to the related tax position, and

b. the potential penalty consequences of the return position. In ascertaining applicable return reporting and disclosure standards, a member should follow the standards in section 2.1, "Tax Return Positions," of SSTS No. 2, Standards for Members Providing Tax Compliance Services, Including Tax Return Positions.

3.1.5. A member has no professional obligation to communicate the impact of subsequent developments that affect advice previously provided to taxpayers, regardless of whether the taxpayers are current clients. Members should communicate the impact of subsequent developments when they are assisting in implementing procedures or plans associated with the tax advice previously provided or are specifically engaged to report on such developments by specific agreement.

Explanations

3.1.6. Tax advice is recognized as a valuable service provided by members. The form of advice may be oral or written and the subject matter may range from routine to complex. Because the range of advice is so extensive and because advice should meet the specific needs of a taxpayer, neither a standard format nor guidelines for communicating or documenting advice to the taxpayer can be established to cover all situations.

3.1.7. Although oral advice may serve a taxpayer's needs appropriately in routine matters or in well-defined areas, written communications are recommended in important, unusual, substantial dollar value, or complicated transactions. The member may use professional judgment about whether, subsequently, to document oral advice.

3.1.8. In deciding on the form of advice provided to a taxpayer, a member should exercise professional judgment and consider such factors as the following:

a. The importance of the transaction and amounts involved.

b. The specific or general nature of the taxpayer's inquiry.

c. The time available for development and submission of the advice.

d. The technical complexity involved.

e. The existence of authorities and precedents.

f. The tax sophistication of the taxpayer.

g. The need to seek other professional advice.

h. The type of transaction and whether it is subject to heightened reporting or disclosure requirements.

i. The potential penalty consequences of the tax position for which the advice is rendered.

j. Whether any potential penalties can be avoided through disclosure.

k. Whether the member intends for the taxpayer to rely on the advice to avoid potential penalties.

3.1.9. A member may assist a taxpayer in implementing procedures or plans associated with the advice offered. When providing such assistance, the member should review and revise such advice as warranted by new developments and factors affecting the transaction.

3.1.10. Sometimes, a member is asked to provide tax advice but does not assist in implementing the plans adopted. Although such developments as legislative or administrative changes or future judicial interpretations may affect the advice previously provided, a member cannot be expected to communicate subsequent developments that affect such advice unless the member undertakes this obligation by specific agreement with the taxpayer.

3.1.11. Taxpayers should be informed that:

a. the advice reflects professional judgment based on the member's understanding of the facts, and the law existing as of the date the advice is rendered, and

b. subsequent developments could affect previously rendered professional advice. Members may use precautionary language to the effect that their advice is based on facts as stated and authorities that are subject to change.

3.1.12. If a member advising on a position, but not engaged to prepare or sign the related tax return, advises the taxpayer concerning appropriate disclosure of the position, then the member shall be deemed to meet the disclosure requirements of these standards.

3.1.13. If particular facts and circumstances lead a member to believe that a taxpayer penalty might be asserted, the member should advise the taxpayer and discuss with the taxpayer the opportunity, if any, to avoid such penalty by disclosing the position on the tax return. Although a member should advise the taxpayer with respect to disclosure, it is the taxpayer's responsibility to decide whether and how to disclose.

3.1.14. This standard does not address situations in which consulting services may be relied on by parties other than the taxpayer.

D. SSTS No. 4: Standards for Members Providing Tax Representation Services

Introduction

4.1.1. This Statement on Standards for Tax Services (SSTS) sets forth the applicable standards for a member representing a taxpayer before an applicable taxing authority. Representing a taxpayer in various tax matters could involve the application of other standards. The focus of this statement is on the representation relationship itself. If the member is aware of an error related to a representation engagement, consult section 1.2, "Knowledge of Errors," of SSTS No. 1, General Standards for Members Providing Tax Services.

4.1.2. In addition to the AICPA, applicable taxing authorities may impose specific standards regarding the representation of taxpayers by a member. These standards can vary between taxing authorities and by type of tax.

Standard

4.1.3. The member, and any individuals working with or for the member, should take steps to obtain technical competence in the subject matter involved. This includes competence in the technical tax area as well as the tax practice and procedures of the taxing authority. For this purpose, competence follows the "Competence" interpretation (ET sec. 1.300.010) of the AICPA Code of Professional Conduct, as well as any other applicable standards.

4.1.4. The member should take appropriate steps to comply with applicable professional and regulatory obligations in connection with representing a taxpayer.

4.1.5. The member should act with integrity and professionalism in dealings with the taxing authority. This includes complying with applicable authority governing the timeliness of a response.

4.1.6. As part of a tax representation engagement, in the event a taxing authority requests taxpayer information from the member, the member should comply with the "Confidential Client Information Rule" (ET sec. 1.700.001) in the AICPA Code of Professional Conduct and applicable laws and regulations in responding to any such request.

4.1.7. If, in connection with professional representation, a member becomes aware of taxpayer conduct that may be fraudulent or criminal in nature, the member should consider whether to continue a professional or employment relationship with the taxpayer. A member may also recommend a legal consultation.

4.1.8. In connection with a taxing authority's completion of the examination, the member should review any documents or computations detailing the results of the examination for consistency. The member should also discuss with the taxpayer the consequences of agreeing to these conclusions pursuant to the terms of the engagement.

Explanations

4.1.9. Members should consider multiple factors that could affect a taxpayer representation engagement. Among other items, this may include the following:

a. Consulting with legal counsel to determine whether the representation would constitute the unauthorized practice of law.

b. Determining whether CPA licensure in another jurisdiction may be required.

c. Executing any taxpayer authorizations required by the taxing authority, such as powers of attorney.

d. Determining whether the member may be facing a conflict of interest.

e. Establishing and documenting in writing an understanding with the taxpayer regarding objectives of the engagement, services to be performed, taxpayer's acceptance of its responsibilities, member's responsibilities, and any limitations of the engagement.

4.1.10. When representing taxpayers, members are required to comply with applicable conflict-of-interest standards, such as those mentioned in "Ethical Conflicts" (ET sec. 1.000.020) and the "Integrity and Objectivity Rule" (ET sec. 1.100.001 and 2.100.001) and related interpretations of the AICPA Code of Professional Conduct.

CHAPTER 2: TEST YOUR KNOWLEDGE

The following questions are designed to ensure that you have a complete understanding of the information presented in the chapter (assignment). They are included as an additional tool to enhance your learning experience and do not need to be submitted in order to receive CPE credit.

We recommend that you answer each question and then compare your response to the suggested solutions on the following page(s) before answering the final exam questions related to this chapter (assignment).

1.	**Which of the following is the best definition of a tax position according to section 1.1.4 of SSTS No. 1:** **A.** the amount of tax a taxpayer owes **B.** a conclusion reached when applicable tax law is applied to a particular transaction or set of facts **C.** the likelihood that a taxpayer will be penalized for a certain tax position **D.** the standards imposed by the applicable taxing authority
2.	**According to section 3.1.8 of SSTS No. 3, which factors should a member consider while deciding on the form of advice provided to a taxpayer:** **A.** the time available for development and submission of the advice **B.** the tax sophistication of the taxpayer **C.** the potential penalty consequences of the tax position for which the advice is rendered **D.** all of the above

CHAPTER 2: SOLUTIONS AND SUGGESTED RESPONSES

Below are the solutions and suggested responses for the questions on the previous page(s). If you choose an incorrect answer, you should review the pages as indicated for each question to ensure comprehension of the material.

1.	**A.** Incorrect. A tax position is not the same as the amount of tax a taxpayer owes. **B.** **CORRECT**. According to section 1.1.4 of SSTS No. 1, a tax position is defined as a conclusion reached when applicable tax law, regulations, case law, or other regulatory or recognized guidance is applied to a particular transaction, a specific set of facts and circumstances, or a controversy. **C.** Incorrect. A tax position does not refer to the likelihood of a taxpayer being penalized but rather the conclusion reached when applying applicable tax law to a specific transaction or set of facts. **D.** Incorrect. The standards imposed by the applicable taxing authority are the subject of section 1.1.5, not section 1.1.4.
2.	**A.** Incorrect. The time available for developing and submitting the advice is one factor that a member should consider when deciding on the form of advice provided to a taxpayer. However, it is not the only factor. **B.** Incorrect. The tax sophistication of the taxpayer is another factor that a member should consider while deciding on the form of advice provided to a taxpayer. However, it is not the only factor. **C.** Incorrect. The potential penalty consequences of the tax position for which the advice is rendered is also one of the factors that a member should consider while deciding on the form of advice provided to a taxpayer. However, it is not the only factor. **D.** **CORRECT**. A member should exercise professional judgment and consider various factors before providing advice to a taxpayer. These factors include the importance of the transaction, the technical complexity involved, the existence of authorities and precedents, and the type of transaction and whether it is subject to heightened reporting or disclosure requirements. Additionally, the member should consider the time available for development and submission of the advice, the tax sophistication of the taxpayer, the potential penalty consequences of the tax position for which the advice is rendered, and whether any potential penalties can be avoided through disclosure.

GLOSSARY

American Institute of Certified Public Accountants (AICPA) - The national professional organization for all certified public accountants (CPAs).

Client's records - Any accounting or other records belonging to the client that were given to the member by, or on behalf of, the client.

Conflict of interest - A conflict of interest may occur if a member performs a professional service for a client or employer, and the member or his or her firm has a relationship with another person, entity, product, or service that could, in the member's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the member's objectivity.

Contingent fee - A fee for performing any service in which the amount of the fee (or whether a fee will be paid) depends on the results of the service.

Firm - A form of organization permitted by state law or regulation whose characteristics conform to resolutions of Council that is engaged in the practice of public accounting, including the individual owners thereof.

Integrity - An element of character fundamental to professional recognition. It is the quality from which public trust derives and the benchmark against which a member must ultimately test all decisions.

Member - In its broadest sense, "member" is a term used to describe a member, associate member, or international associate of the AICPA. All members must adhere to the AICPA's Code of Professional Conduct. For the purposes of applying the independence rules, the term "member" identifies the people in a CPA firm and their spouses, dependents, and cohabitants who are subject to the independence requirements.

Rules - Broad but specific descriptions of conduct that would violate the responsibilities stated in the principles in the Code of Professional Conduct.

Statements on Standards for Tax Services (SSTS) - SSTS superseded and replaced the AICPA's Statements on Responsibilities in Tax Practice (SRTP). They are enforceable standards of conduct for tax practice under the Code of Professional Conduct.

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FINAL EXAM COPY

The following exam will not be graded. It is attached only for your convenience while you read the course text. To access the exam to be submitted for grading, go to your account and select Take Exam.

1. Bob Jones, Inc. is a new small business client that has asked you to prepare its current year tax return. Upon interviewing the client, you determine that the client has not filed several prior year tax returns. According to Circular 230, what should you do:

A. advise the client promptly of the fact of noncompliance

B. notify the IRS of this failure

C. advise the client promptly of the fact of noncompliance and notify the IRS if the client refuses to file

D. ignore the fact of non-filing provided the current year return is filed timely

2. Which of the following is true regarding when a contingent fee is permitted by the IRS:

A. contingent fees are permitted as long as AICPA standards are followed

B. contingent fees may be charged on an original return when the practitioner reasonably anticipates that the return position will be substantially reviewed by the IRS prior to filing of the return

C. contingent fees are allowed for services rendered in connection with the IRS' challenge to an original tax return

D. contingent fees are never allowed

3. In preparing the tax return for Nash Plumbing, Inc., you notice a large deduction for "consulting services." You ask your client to explain this deduction, and he explains it represents tuition paid for his son to attend college. You know that no 1099 or W-2 was issued for these services nor is any of this income reflected on your client's personal tax return or his son's. Your client states that "everyone" in this industry does this. This deduction is equivalent to 20% of the net income. Which of the following is correct regarding your ability to sign the tax return for Nash Plumbing, Inc. per Circular 230 Section 10.34:

A. you may sign the return since the return meets the "nonfrivolous standard"

B. the client's assertion that the deduction is industry practice is frivolous. Accordingly, the position does not meet Section 10.34 and you may not sign the return

C. you may sign the return only if the deduction is clearly identified on the return as "consulting expense paid to son" or some similar disclosure

D. you may sign the return since everything on the return is the representation of the client

4. According to Circular 230, Section 10.36, which of the following is correct regarding procedures to ensure compliance:

A. it places the first layer of responsibility on the IRS as part of a regulatory environment

B. it provides that only firms, and not individuals of a firm, can be subject to disciplinary action for failing to comply with Circular 230

C. the provision is ineffective

D. it makes an individual of a firm into an enforcer of Circular 230

5. A practitioner may give written advice concerning one or more federal tax matters. All of the following are requirements of such practitioners except:

A. the practitioner must base the written advice on reasonable factual and legal assumptions

B. the practitioner must reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know

C. the practitioner must use reasonable efforts to identify and ascertain the facts relevant to written advice on each federal tax matter

D. the practitioner must provide a reasonable estimate of the cost of the written advice prior to performing any such work

6. Which of the following is not a component of the Taxpayer Bill of Rights:

A. the right to have a refund issued within 10 days

B. the right to privacy

C. the right to pay no more than the correct amount of tax

D. the right to appeal an IRS decision in an independent forum

7. Which of the following statements is true regarding a member's obligation to advise a taxpayer of relevant tax disclosure responsibilities and potential penalties according to SSTS No. 1:

A. the member has no obligation to advise the taxpayer

B. the member should advise the taxpayer only if they believe that a taxpayer penalty might be imposed

C. the member should advise the taxpayer and discuss with them the opportunity to avoid a taxpayer penalty by appropriate disclosure to the taxing authority

D. the member should never advise the taxpayer to take a tax position

8. According to SSTS No. 2, what should a member do if the applicable taxing authority has no written standards with respect to preparing or signing a tax return:

A. prepare or sign the tax return without any consideration

B. prepare or sign the tax return only if the tax return position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged

C. not sign the tax return under any circumstances

D. comply with the taxing authority standards that exceed the realistic possibility standard described in paragraph 2.1.6a

9. According to SSTS No. 3, which of the following is correct regarding communicating the impact of subsequent developments that affect advice previously provided to taxpayers:

A. members should communicate such impacts if they are assisting in implementing procedures or plans associated with the tax advice previously provided

B. members should communicate such impacts if they are specifically engaged to report on such developments by specific agreement

C. members are never required to communicate such impacts unless the taxpayers are current clients

D. both A and B are correct

10. According to SSTS No. 4, what should a member do if they become aware of taxpayer conduct that may be fraudulent or criminal in nature:

A. ignore the conduct and continue with the professional relationship with the taxpayer

B. consider whether to continue a professional or employment relationship with the taxpayer

C. report the conduct immediately to the taxing authority

D. notify other members of the taxpayer's conduct