Enrolled Agent Ethical Standards: Practices & Procedures – 2 hrs

by

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Enrolled Agent Ethical Standards: Practices & Procedures Exam

1. When may an enrolled agent advise a client to submit a document to the Internal Revenue Service that disregards a regulation?
    a. When the submission will be accompanied by a document evidencing a good-faith challenge to the regulation
    b. When doing so will tend to reduce the taxpayer's liability
    c. When the enrolled agent believes the result of application of the regulation will be inequitable
    d. Never

2. What factor is taken into consideration when determining whether an enrolled agent's actions were willful, reckless or the result of gross incompetence?
    a. Whether the enrolled agent has repeatedly made the same or similar error or omission
    b. The enrolled agent's age and education
    c. The duration of the enrolled agent's employment as a tax practitioner
    d. The enrolled agent's gender

3. John, an enrolled agent, signed a tax return for his client that may result in penalties for the client. In such a case, he must advise the client of all the following EXCEPT:
    a. The possibility that penalties will be imposed on the client
    b. Any opportunity to avoid penalties that are likely to apply
    c. The enrolled agent's past success in maintaining the questionable position on the return
    d. Requirements applicable to the client to make adequate disclosure

4. How many calendar days must pass after the last date on which an enrolled agent published a schedule of fees before he or she may increase them?
    a. 15 days
    b. 5 days
    c. 45 days
    d. 30 days

5. Susan, an enrolled agent, knows that her client has submitted a tax return containing an error. Which of the following actions, if any, should she take?
    a. She should advise the client of the error and its consequences
    b. She should inform the local IRS office of the error
    c. She should refuse to engage in any further work for the client
    d. No action is required of her

6. Karl is an enrolled agent whose employer regularly uses solicitation methods that violate the regulations governing practice before the Internal Revenue Service. What should he do?
    a. Terminate his employment
    b. Express his concern to his supervisor
    c. Use his knowledge of the employer's methods to increase his compensation
    d. Nothing; it is the firm's problem rather than his

7. Bill, an enrolled agent, has received a request for client records that are not in his possession. He must do all of the following EXCEPT:
    a. Notify the requesting Internal Revenue Service officer or employee that he does not possess the records
    b. Ask the client's former tax preparer for the records
    c. Provide any information he has as to who he believes may have the requested records
    d. Ask the client who possesses the records

8. A penalty may be imposed by the Treasury Department on an enrolled agent for all of the following EXCEPT:
    a. Incompetence
    b. Failure to comply with regulations
    c. Disreputable conduct
    d. Laziness

9. The maximum monetary penalty that may be imposed on a practitioner by the Office of Professional Responsibility is:
    a. $25,000
    b. No monetary penalty may be imposed
    c. An amount equal to the gross income derived from the enrolled agent's conduct that gives rise to the penalty
    d. No limit applies to the monetary penalty that may be imposed

10. All of the following would be considered contemptuous conduct deemed disreputable under the regulations governing practice before the Internal Revenue Service EXCEPT:
    a. Giving an incorrect opinion
    b. Using abusive language
    c. Making false accusations
    d. Publishing libelous matter

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EXAM INSTRUCTIONS AND ANSWER SHEET – Ethics 2019, TAXATION

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1. After completing this CPE program, did you feel that the stated learning objectives were met? _____

2. Were the stated prerequisite requirements appropriate and sufficient for this CPE program? _____

3. Were the program materials, including the qualified assessment (final exam) relevant and did they contribute to the achievement of the learning objectives? _____

4. Was the time allotted for this learning activity appropriate? _____

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Program Description

The Internal Revenue Service routinely processes more than 200 million tax returns each year, many of them prepared by tax professionals. Not surprisingly, as tax law becomes increasingly complex, taxpayers often seek the knowledgeable assistance of enrolled agents and other professionals in their preparation.

To help ensure enrolled agents and other professionals understand their ethical responsibilities in representing their clients before the IRS and in preparing tax returns, the IRS has published Treasury Department Circular 230. Circular 230 offers substantial guidance by:

- Setting forth rules relating to the authority to practice before the IRS; and
- Identifying the duties and restrictions relating to such practice.

This course will examine the principal rules, duties and restrictions applicable to enrolled agents in their professional activities.

Learning Objectives

Upon completion of this course, you should be able to:

- Recognize the permitted scope of enrolled agent responsibilities in their practice before the Internal Revenue Service;
- Identify the best practices for preparing or assisting in the preparation of a submission to the Internal Revenue Service; and
- List the duties and restrictions applicable to enrolled agents with respect to –
    - Information to be furnished to the IRS,
    - Dealing with taxpayer omissions, errors and noncompliance with U.S. revenue laws,
    - The requirement for preparer diligence,
    - Return of client records,
    - The existence of conflicts of interest, and
    - Solicitation of business.

Completion Deadline & Exam

This course, including the examination, must be completed within one year of the date of purchase. In addition, unless otherwise indicated, no correct or incorrect feedback for any exam question will be provided.

Field of Study

Regulatory Ethics

Recommended CPE Credits

2.00 CPE Credits

Instructional Delivery Method

Self-Study

Program Level

Overview. This program is appropriate for professionals at all organizational levels.

Program Prerequisites

None

Advanced Preparation

None

Program Expiration Date

This course, including the final exam, must be completed within one year of the date of purchase.

Instructions

In order to receive credit for this course, all students should review the learning objectives and outcomes, read and understand all program materials, answer all review questions, and complete and pass the final exam.

The passing score for the final exam for this course is 70% or better answered correctly. In the event that you score less than 70% correct you must retake the final exam.

Table of Contents

Chapter 1:
Practice Before the Internal Revenue Service

Learning Objectives

After studying this chapter, you will be able to:

1. Define "practice before the Internal Revenue Service";
2. Recognize the general scope of permitted enrolled agent practice responsibilities;
3. List the categories of individuals permitted to practice before the IRS; and
4. Identify the extent of practice privileges

Introduction

The right to practice before the Internal Revenue Service (IRS) is generally reserved to certain professionals such as CPAs, attorneys, enrolled agents and other individuals in specifically-defined categories. While the right to engage in practice before the IRS enjoyed by various professionals includes many activities, the authorized activities may be limited or unlimited and may or may not require the submission of a written declaration to the IRS.

This chapter will define the term "practice before the IRS" and will examine the extent of practice privileges granted to various categories of tax professionals.

Professional Practice

Treasury Department Circular 230[1] in §10.2 defines the term "Practice before the Internal Revenue Service" as including

> …all matters connected with the 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.

More specifically, the term "practice before the Internal Revenue Service" encompasses a wide range of professional activities engaged in on behalf of a client that include (but are not limited to):

- Preparing documents;
- Filing documents;
- Corresponding and communicating with the IRS;
- Providing written advice (see **Written Advice** in Chapter 2) concerning –
  - An entity,
  - A transaction,
  - A plan, or
  - An arrangement

  … having a potential for tax avoidance or evasion; and
- Representing a client at conferences, hearings and meetings.

Role of the Enrolled Agent

The enrolled agent designation is the highest credential awarded by the Internal Revenue Service (IRS). Accordingly, an individual who is an enrolled agent has unlimited professional practice rights with respect to IRS matters, similar to those possessed by certified public accountants (CPAs) and attorneys identified in **Professional Practice**, above.

[1] Treasury Department Circular 230 can be accessed at https://www.irs.gov/pub/irs-pdf/pcir230.pdf.

Because of those unlimited practice rights, an enrolled agent is unrestricted as to matters before the IRS concerning the:

- Taxpayers the enrolled agent may represent;
- Types of tax matters the enrolled agent is permitted to handle; or
- IRS offices before which the enrolled agent may represent clients.

Individuals who may Practice

An individual has a right to represent him/herself before the IRS upon presentation of satisfactory identification. In addition, certain categories of persons have varying rights to practice before the IRS with respect to others.

In representing others before the IRS, an individual may possess:

- Unlimited practice rights; or
- Limited practice rights.

Regardless of whether an individual's rights to practice before the IRS are unlimited rights or limited rights, the individual possessing such rights is subject to the provisions of Treasury Department Circular 230.

Professionals with Unlimited Practice Rights

Individuals with rights to represent any client before any office of the IRS on any tax matter are the following:

- CPAs;
- Attorneys; and
- Enrolled agents.

In addition, an individual without the unlimited practice rights possessed by CPAs, attorneys and enrolled agents may engage in limited practice before the IRS if not otherwise prohibited (see **Individuals with Limited Practice Rights**, below).

Practice by Certified Public Accountants

A CPA may practice before the IRS on any matter before it—provided the CPA is not currently under suspension or disbarment from practice before the IRS—by filing a written declaration with the IRS. The declaration must state that the CPA:

- Is currently qualified as a certified public accountant; and
- Is authorized to represent the party or parties with respect to a matter before the IRS.

An exception to the requirement to file a written declaration in order to practice before the IRS has to do with a CPA's rendering written advice. Although rendering of written advice, as described in Chapter 2 below (see **Written Advice**) is considered practice before the IRS, a CPA not currently suspended or disbarred from practice before the IRS is ***not*** required to file a written declaration before providing such advice.

Practice by Attorneys

Similar to the method by which a CPA is permitted to practice before the IRS, any attorney, not disbarred or suspended from practice before the IRS, may also practice before the IRS by filing a written declaration with the IRS. The required written declaration must declare that the individual:

- Is currently qualified as an attorney; and
- Is authorized to represent the party or parties concerning a matter before the IRS.

The exception to the requirement to file a written declaration to practice before the IRS prior to rendering written advice applicable to a CPA also applies to an attorney. Accordingly, an attorney who is qualified and not currently suspended or disbarred from practice before the IRS need ***not*** file a written declaration before providing written advice.

Practice by Enrolled Agents

Unlike the declarations that must be filed by CPAs and attorneys in order to practice before the IRS, no such declaration is required by enrolled agents. Thus, any individual who is an enrolled agent is

permitted to practice before the IRS with respect to any matter before it, provided the enrolled agent is not currently under suspension or disbarment from practice before the IRS.

Individuals with Limited Practice Rights

In addition to CPAs, attorneys and enrolled agents—professionals whose right to practice before the IRS is unlimited—certain other individuals have limited rights to practice before the IRS. Those individuals with limited rights include:

- Enrolled actuaries;
- Enrolled retirement plan agents; and
- Registered tax return preparers.

Also, individuals have limited practice rights with respect to their representation of certain individuals and entities with whom they have a relationship. (See **Representation Based on Taxpayer Relationship** below.)

Enrolled Actuaries

The Employee Retirement Income Security Act (ERISA), as a way of helping to ensure that qualified retirement plans are able to meet their liabilities and comply with applicable rules, requires that employer-sponsored retirement plans receive periodic actuarial services. Those services are typically performed by an enrolled actuary.

Among the qualified plan services ordinarily performed by an enrolled actuary are the following:

- Providing qualified plan design assistance to employers;
- Performing plan anti-discrimination testing;
- Reviewing and certifying plan funding valuations;
- Doing participant benefit calculations and estimates; and
- Completing various forms and returns, such as –
    - Pension Benefit Guaranty Corporation forms, and
    - IRS Form 5500.

Thus, an individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries may engage in limited practice before the IRS, provided:

- The individual is not currently under suspension or disbarment from practice before the IRS; and
- The individual files a written declaration with the IRS stating that –
    - He or she is currently qualified as an enrolled actuary, and
    - He or she is authorized to represent the party for whom acting.

Not surprisingly, an enrolled actuary's practice before the IRS is limited to issues involving qualified retirement plans. Those issues include:

- Qualification of an employee plan, i.e. whether a plan meets the law's requirements to allow it to receive the special tax treatment enjoyed by qualified retirement plans; and
- Whether a plan meets various other statutory requirements including those relating to –
    - Deductibility of employer contributions,
    - Applicable funding requirements,
    - Plan definitions and other qualified plan-specific rules, and
    - Annual plan registration and periodic actuarial reports.

Enrolled Retirement Plan Agents

Ensuring that qualified retirement plans comply with applicable non-actuarial requirements also tends to be a fairly complicated job, and employers sponsoring such plans often seek the assistance of other professionals. Among the professionals selected to provide such professional services are enrolled retirement plan agents (ERPAs).

An individual who is enrolled as a retirement plan agent and who is not under suspension nor disbarment from practice before the IRS may engage in limited practice before the IRS on matters involving:

- The Employee Plans Determination Letter program, a program that enables a retirement plan sponsor to request a determination letter from the IRS to gain assurance that its retirement plan is in compliance with the tax qualification requirements;
- The Employee Plans Compliance Resolution System (EPCRS), an IRS system that permits a plan sponsor to remedy mistakes and avoid plan disqualification for failures such as –
    - Failing to properly provide minimum benefits to non-key employees under top-heavy plans,
    - Failing to satisfy the actual deferral or actual contribution test under a 401(k) plan,
    - Failing to distribute elective deferrals made in excess of the applicable limits,
    - Excluding an eligible employee from contributions or accruals under a plan,
    - Failing to timely pay required minimum distributions,
    - Failing to obtain participant or spousal consent for a plan distribution when required pursuant to the spousal consent rules, or
    - Failing to satisfy the defined contribution § 415 limits;
- The Employee Plans Master and Prototype Program (consisting of a basic plan document and an adoption agreement) and Volume Submitter (a type of individually-designed plan) Program; and
- IRS Form 5300, Application for Determination for Employee Benefit Plan, and IRS Form 5500, Annual Return/Report of Employee Benefit Plan filings.

Registered Tax Return Preparers

Beginning in 2016, a return preparer who is not an attorney, CPA, or enrolled agent and who does not participate in the Annual Filing Season Program is permitted only to prepare tax returns. The return preparer is not permitted to represent clients before the IRS except in regard to returns prepared by the return preparer before January 1, 2016.

Registered tax return preparers who are participants in the Annual Filing Season Program (AFSP) and who are not currently under suspension or disbarment from practice before the IRS, however, have limited client representation rights. Pursuant to those limited representation rights, AFSP participants are limited in their representation of clients to those whose returns they prepared and signed:

- Involving initial audits;
- Regarding customer service matters; and
- Before the Taxpayer Advocate Service.

Note: To have limited representation rights for any return or claim for refund prepared and signed after December 31, 2015, return preparers must participate in the Annual Filing Season Program in both **the year of return preparation and the year of representation**.

Representation Based on Taxpayer Relationship

An individual who is not an enrolled agent may also represent a taxpayer before the IRS in certain circumstances, provided:

- The individual presents satisfactory identification and proof of the authority to represent the taxpayer; and
- The individual is not under suspension or disbarment from practice before the IRS.

The circumstances under which a non-enrolled agent or other non-credentialed individual may represent a taxpayer before the IRS are as follows:

- An individual may represent a member of his or her immediate family;
- A regular full-time employee of an individual employer may represent the employer;
- A general partner or regular full-time employee of a partnership may represent the partnership;
- An officer or regular full-time employee of a corporation (or its affiliates), association or organized group may represent the corporation, association or group;
- A regular full-time employee of a trust, receivership, guardianship or estate may represent the trust, receivership, guardianship or estate;
- An officer or 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; and

- An individual may represent any individual or entity residing outside the United States when such representation takes place outside the U.S.

Summary

The term "practice before the IRS" includes many activities in which tax professionals normally engage when providing professional services to clients. Among those activities are preparing and filing documents, communicating with the IRS, providing written advice concerning a matter with a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

In representing others before the IRS, an individual may possess a right to practice that is limited or unlimited. However, regardless of the limited or unlimited nature of an individual's right to practice, the individual possessing such right is subject to the provisions of Treasury Department Circular 230.

CPAs, attorneys and enrolled agents have unlimited rights to practice before the IRS. Thus, they may represent any client before any office of the IRS on any tax matter provided they are not currently suspended or disbarred from practice before the IRS. Although CPAs and attorneys wishing to represent a client before the IRS must file a written declaration with the IRS stating that they are currently qualified and authorized to represent the party, such a declaration is not required from an enrolled agent.

An exception to a CPA's or attorney's requirement to file a written declaration relates to their rendering written advice. Despite such written advice being considered practice before the IRS, a written declaration in connection with providing it is not required.

In addition to the categories of individuals with unlimited rights to practice before the IRS, enrolled actuaries, enrolled retirement plan agents and tax return preparers participating in the AFSP possess specifically-identified limited rights. Individuals also have limited practice rights with respect to their representation of certain individuals and entities generally based on their relationship to the taxpayer.

Upon filing a written declaration with the IRS that he or she is currently qualified and authorized, an enrolled actuary may practice before the IRS. The enrolled actuary's right to practice before the IRS is limited to providing actuarial services to qualified retirement plans, including plan valuation and other actuarial services. An individual who is enrolled as a retirement plan agent may also engage in limited practice before the IRS on non-actuarial matters involving qualified plans. Such individuals must not be under suspension or disbarment from practice before the IRS.

Registered tax return preparers who are participants in the Annual Filing Season Program (AFSP) and not currently under suspension or disbarment from practice before the IRS possess limited client representation rights permitting them only to represent clients whose returns they prepared and signed. Thus, AFSP participants may represent such clients before the IRS with respect to initial audits, customer service matters and before the Taxpayer Advocate Service. However, in order to possess such limited representation rights in connection with returns or claims for refund prepared and signed after December 31, 2015, return preparers must participate in the Annual Filing Season Program in both the year of return preparation and the year of representation.

Representation is not limited to tax professionals. Instead, a non-professional who possesses a relationship with a taxpayer and who has also been granted authority by the taxpayer to do so may represent the taxpayer. Accordingly, an individual may represent an immediate family member; an employee may represent an employer; and an individual may represent another who is outside the United States when such representation takes place outside the U.S.

Chapter 1 Review Questions

1. Which of the following activities performed by a CPA on behalf of a client does NOT require that a written declaration of qualification and authorization be submitted to the IRS?
   a. Corresponding with the IRS on behalf of a client in connection with a matter before the IRS
   b. Preparing and filing documents with the IRS on behalf of a client
   c. Providing written advice to a client concerning a transaction having a potential for tax avoidance
   d. All professional practice engaged in by a CPA before the IRS requires that a written declaration be filed stating the CPA is qualified and authorized

2. In addition to participating in the Annual Filing Season Program in the year that a client's tax return was prepared, a tax return preparer who is not a CPA, enrolled agent or attorney and who is interested in representing a client before the IRS concerning a return prepared and signed by the preparer must:
   a. participate in the AFSP program in the year of representation
   b. submit a written declaration of qualification and authority to represent the client
   c. be related to the client
   d. agree to represent the client without compensation

Chapter 2:
Enrolled Agent Requirements

Learning Objectives

After studying this chapter, you will be able to:

1. Recognize the specific duties and restrictions imposed on an enrolled agent's practice before the IRS;
2. Describe the enrolled agent renewal cycle;
3. List the continuing education requirements applicable to enrolled agents; and
4. Understand the Internal Revenue Service PTIN requirements.

Introduction

Certain duties and restrictions—generally identified in Treasury Department Circular 230—are imposed on enrolled agents by the Internal Revenue Service with respect to practice before it. This chapter discusses those duties and restrictions and identifies certain enrolled agent best practices.

Enrolled Agent Duties and Restrictions

The Internal Revenue Service imposes certain duties on an enrolled agent's practice before the IRS and applies restrictions with respect to his or her professional activities. Among such prescribed duties and restrictions are those related to:

- Information to be furnished to the IRS;
- Omissions or errors on a tax return, document or affidavit;
- Employing or accepting assistance from former IRS employees or disbarred/suspended persons;
- Advertising, solicitation and fee information;
- Due diligence requirements;
- Conflicting interests;
- Negotiation of client refund checks;
- Written advice, covered opinions, tax return positions and preparing returns;
- Continuing education;
- Tax shelters;
- Enrollment cycle and renewal;
- Prompt disposition of matters before the IRS;
- Return of client records and documents;
- PTIN requirements; and
- Enrolled agent supervisory responsibilities.

Responding to IRS Requests for Information

From time to time the Internal Revenue Service may request information or records relating to any matter before it. If an enrolled agent receives an IRS request for records or information, the enrolled agent must promptly submit the requested material. The only time you, as an enrolled agent, may refuse to comply with a request from the IRS, assuming the requested records or information are in your possession, is when you believe in good faith and on reasonable grounds that the records or information are privileged.

Privileged Records or Information

Two terms—good faith and privilege—identify conditions that are necessary for an enrolled agent's refusal to comply with an IRS request to provide records in his or her possession. They deserve

clarification since an enrolled agent's acting lawfully in the withholding of information or records in his or her possession from the IRS may depend on a proper understanding of what those terms mean.

"Good faith" refers to an absence of malice or any intention to deceive. It is characterized by good intentions and sincerity. "Privileged information" is that information that is legally protected and need not be disclosed. The rationale for a legitimate claim of privilege generally arises from society's belief that a greater good would be realized by ensuring confidentiality than would be realized by disclosure. In such a case, a confidential relationship is deemed more important to society than the transparency that would result from disclosure.

For example, in order for a professional—an attorney, financial adviser, etc.—to competently and effectively represent a client, the client must be able to fully share the details of a situation with the professional uninhibited by the fear that it will be disclosed to an unauthorized person. Privilege, in ensuring confidentiality, promotes the honest and open disclosure between the client and the professional who relies on it to adequately represent the client.

Federally authorized professionals bound by the Department of Treasury's Circular 230 regulations—a category that includes enrolled agents—enjoy a limited client confidentiality privilege. This privilege allows confidentiality between the taxpayer and the enrolled agent under certain conditions. The privilege applies to situations in which the taxpayer is being represented in cases involving audits and collection matters. However, it is not applicable to the enrolled agent's preparation and filing of a tax return.

Requested Material not in Enrolled Agent's Possession

In some cases, the requested material may not be in the enrolled agent's possession or subject to his or her control. In such a case, assuming it is not privileged, the enrolled agent is required to:

- Promptly notify the requesting Internal Revenue Service officer or employee;
- Provide to the requester any information the enrolled agent has with respect to the identity of any person who the enrolled agent believes may have possession or control of the requested records or information; and
- Make reasonable inquiry of the affected client concerning the identity of any person who may have possession or control of his or her requested records or information.

Although the enrolled agent is required to make a reasonable inquiry of the client concerning the location of the requested records, the enrolled agent has no further duty to make inquiry of any other person. Furthermore, the enrolled agent is not expected to independently verify any information provided by the client regarding the identity of such a person.

Material Requested Concerning Alleged Enrolled Agent Violation

Alleged enrolled agent violations of Internal Revenue Service rules are investigated. When a duly authorized officer or employee of the Internal Revenue Service makes a request of an enrolled agent concerning an inquiry into an enrolled agent's alleged violation of the regulations, the enrolled agent must:

- Provide any information he or she has concerning the alleged violation; and
- Testify regarding the provided information in any subsequent proceeding with respect to the alleged violation, unless the enrolled agent believes in good faith and on reasonable grounds that the information is privileged.

Interference with an IRS Request for Information

Treasury Department regulations governing practice before the Internal Revenue Service specifically prohibit an enrolled agent from interfering, or attempting to interfere, with a proper and lawful effort by the IRS, its officers or employees, to obtain any record or information unless the enrolled agent believes in good faith and on reasonable grounds that the record or information is privileged.

Knowledge of Client Omissions

What if the information provided to an enrolled agent is inaccurate? How should the enrolled agent respond? An enrolled agent who has been retained by a client has certain obligations if he or she knows that the information supplied by the client for use in preparing a tax return or other document to be submitted to the Internal Revenue Service is inaccurate.

Pursuant to Treasury Department Circular 230, an enrolled agent who has been retained by a client concerning a matter administered by the Internal Revenue Service and who knows that the client has failed to comply with the revenue laws or has made an error in or omission from a tax return, document, affidavit, or other paper which the client submitted or executed under the U.S. revenue laws has a positive duty to make certain disclosures to the client.

When a retained enrolled agent is aware of a failure to comply with revenue laws with respect to a tax return or other submitted document or that they contain an error or omission, the enrolled agent is required:

- To advise the client that he or she has failed to comply with U.S. revenue laws or has made an error or omission; and
- To advise the client of the consequences of his or her failure to comply with applicable law or of making the error or omission.

Former IRS Employees and Disbarred or Suspended Persons

An enrolled agent is prohibited from knowingly and directly or indirectly:

- Accepting assistance from or providing assistance to any person who is under disbarment or suspension from practice before the IRS if the assistance relates to a matter constituting practice before the Internal Revenue Service; or
- Accepting assistance from a former government employee if accepting such assistance would violate –
    - Circular 230 §10.25;
    - 18 U.S.C. 207[2]; or
    - Any other law of the United States.

General Rules on Practice by Former Government Employees

Circular 230 recites the general rules concerning practice by former government employees in §10.25(b) and their partners and associates in §10.25(c). The general rules prohibit a former government employee from representing anyone in a matter administered by the IRS for varying lengths of time, depending on the facts and circumstances, as follows:

- If the former government employee personally and substantially participated in a particular matter involving specific parties while a government employee, such former employee is prohibited subsequent to government employment from representing or assisting a person who was or is a specific party to that matter. No time limit applies to this prohibition. In addition, if the former government employee is a member of a firm, no firm member is permitted to represent or assist such person unless –
    - the firm isolates the former government employee in a manner that ensures the former government employee cannot assist in the representation, and
    - a member of the firm acting on its behalf and the former government employee execute a statement affirming under oath
        - the fact of such isolation, and
        - the identity of
            a) the firm,
            b) the former government employee, and
            c) the particular matter requiring isolation;
- If the former government employee had official responsibility for a particular matter involving specific parties within a one-year period prior to termination of government employment, the former employee may not represent in that particular matter a person who was or is a specific party to that matter for a period of two years following termination of government employment; and
- If the former government employee participated in the development of a rule or if the former government employee had official responsibility for it within a period of one year prior to termination of government employment, then the former employee is prohibited for a period of one year following termination of government employment from communicating with or

[2] 18 U.S.C. 207 may be accessed at https://www.law.cornell.edu/uscode/text/18/207.

appearing before any employee of the Treasury Department with the intent to influence such employee in connection with the –

- Publication,
- Withdrawal,
- Amendment,
- Modification, or
- Interpretation

…of the rule.

Solicitation of Business

Treasury Department Circular 230 specifies certain requirements and restrictions with respect to the solicitation of business. Those requirements address various issues, including:

- Advertising and solicitation;
- Professional fees;
- Communication of fee information; and
- Improper associations.

Advertising and Solicitation Requirements

Enrolled agents are specifically prohibited from making any statement or claim in connection with an Internal Revenue Service matter that is:

- False;
- Fraudulent;
- Misleading;
- Deceptive; or
- Coercive.

In order that clients and potential clients are not misled by an enrolled agent or other tax professional deceptively holding out as possessing skills, credentials or experience not actually possessed, the Internal Revenue Service specifies how they may describe themselves and their relationship to the IRS. Thus, although an enrolled agent is not permitted to use the term "certified" or to imply that he or she is an employee of the Internal Revenue Service, an enrolled agent may state that he or she is:

- Enrolled to represent taxpayers before the Internal Revenue Service;
- Enrolled to practice before the Internal Revenue Service; or
- Admitted to practice before the Internal Revenue Service.

Any oral or written direct or indirect solicitation of employment in connection with matters related to the Internal Revenue Service by an enrolled agent is prohibited if the solicitation violates federal or state laws or any other rule applicable to the enrolled agent.

Accordingly, an otherwise acceptable solicitation of employment from an enrolled agent must:

- Clearly identify the solicitation as a solicitation of employment; and
- Identify the source of the information, if applicable, used by the enrolled agent to choose the recipient of the solicitation.

Logo Use

The IRS is providing a new enrolled agent logo that EAs may use in their marketing and other materials. The logo created in 2012 containing the IRS eagle is limited to use only by officers and employees of departments and agencies of the United States and may not be used by EAs not so employed after October 31, 2018. Accordingly, it may not appear in any publications, advertising, websites, business cards, or other EA communications with clients or prospective clients. Active enrolled agents can obtain the logo by emailing a request to epp@irs.gov with "EA logo" in the subject line.

Professional Fee Information

An enrolled agent is permitted to state in any advertising or solicitation that clients and potential clients may obtain a written schedule of fees, and the enrolled agent may publish the following information with respect to them:

- Fixed fees for specific routine services;
- Hourly rates;
- Range of fees for particular services; and
- Fees charged, if any, for an initial consultation.

An enrolled agent cannot charge more than the published rates for at least 30 calendar days after the last date on which the schedule of fees was published.

Disclosure of Responsibility for Costs

In some cases, enrolled agents may be employed with respect to matters in which costs are expected to be incurred. In such cases, any statement of fee information related to matters in which costs may be incurred must also disclose whether the clients will be responsible for payment of those costs.

Communication of Fee Information

Enrolled agents have a wide range of acceptable methods of communicating the information concerning their fees. Among the methods you could consider using to disseminate fee information are the following:

- Professional lists;
- Telephone directories;
- Print media;
- Mailings;
- E-mail;
- Facsimile;
- Hand-delivered flyers;
- Radio; and/or
- Television.

Regardless of the method chosen, however, its use must not cause the communication to be untruthful, deceptive, or otherwise in violation of the rules relative to the solicitation of employment.

Retention of Communications Containing Fee Information

You must retain copies of communicated fee information. Copies of such communications must be retained by the enrolled agent for a period of at least 36 months after the date of their last transmission or use.

Because the methods of communicating fee information vary, the type of copy that must be retained also varies. If the communication is contained in a radio or television broadcast, the broadcast must be recorded, and the enrolled agent must retain a recording of the actual transmission. If the communication is contained in direct mail or e-mail, the enrolled agent is required to 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.

Improper Associations

An enrolled agent is forbidden, in matters related to the Internal Revenue Service, to assist, or accept assistance from, any person or entity who, to the knowledge of the enrolled agent, obtains clients or otherwise practices in a manner forbidden under this section. Thus an enrolled agent is prohibited from employment in a firm whose practices violate Treasury Department Circular 230's rules relative to solicitation. Similarly, a firm is prohibited from employing an enrolled agent who violates such rules.

Due Diligence Requirements

Treasury Department Circular 230 addresses the need for an enrolled agent to exercise due diligence with respect to professional activities. Due diligence is the care—a term that includes investigation, if

appropriate—a reasonable person could be expected to exercise in order to avoid harm to oneself, other persons or their property. Essentially, it is the degree of attention or care that would be reasonably expected of a person in a given situation.

Thus, with respect to his or her professional activities, an enrolled agent must exercise the level of care that could be expected of a suitably trained enrolled agent in:

- Preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;
- Determining the correctness of oral or written representations made by the enrolled agent to the Department of the Treasury; and
- Determining the correctness of oral or written representations made by the enrolled agent to clients with reference to any matter administered by the Internal Revenue Service.

For example, the Internal Revenue Service prescribes certain due diligence requirements with respect to determination of a client's earned income tax credit (EIC). In doing that, it requires:

- Completion of an earned income credit eligibility checklist;
- Computation of the credit on a retained EIC worksheet that demonstrates how the credit was computed;
- The enrolled agent to –
    - Verify the identity of the person giving the return information,
    - Neither know nor have reason to know that information used in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect, incomplete or inconsistent with other information in the enrolled agent's knowledge,
    - Not ignore the implications of information furnished by the client or known by the enrolled agent,
    - Make reasonable inquiries if a well-informed enrolled agent could reasonably conclude the information furnished appears to be incorrect, inconsistent or incomplete,
    - Document in his or her records any additional inquiries made into the client's responses and the answers to them upon which you relied to determine the taxpayer's eligibility for EIC and its amount; and
    - Retain various records with respect to EIC eligibility and computation for a period of 3 years following the due date of the tax return, including –
        - The EIC worksheet and IRS Form 8867 related to the tax return, and
        - Any documents verifying the taxpayer's identity.

Within limits, an enrolled agent is presumed to have exercised due diligence if a) he or she relies on the work product of another person and b) the EA used reasonable care in engaging, supervising, training and evaluating that person. However, when relying on another's work product in providing written client advice, the enrolled agent must:

1. Base the advice on reasonable factual and legal assumptions;
2. Reasonably consider all relevant facts and circumstances;
3. Use reasonable efforts to ascertain the facts relevant to the matter for which the advice is given;
4. Not rely upon information received from the taxpayer or others if such reliance would be unreasonable;
5. Relate applicable law and authorities to the facts of the specific situation; and
6. Not take into account in evaluating a federal tax matter that a tax return might avoid audit.

In evaluating whether an enrolled agent's advice complied with these requirements, the IRS will apply a reasonable enrolled agent standard. So, an enrolled agent cannot rely on another's advice if the EA knew or reasonably should have known that:

- The advice was not reliable. Thus, if the EA knew that the adviser failed to consider all the relevant facts—either due to ignorance of them or incompetence—the advice given has a heightened probability of being incorrect.
- The person rendering the advice was not competent or qualified. For instance, if the person rendering the advice had limited knowledge of the tax law as it relates to the issue under consideration, the resulting advice would be suspect and should not be relied upon without further consideration.

- The person rendering the advice had a conflict of interest that violated Treasury Circular 230. In such a case, the existence of the interest conflict would cause the advice to be suspect due to possible bias and/or lack of objectivity.

Conflicting Interests

Treasury Department Circular 230 addresses the issue of conflicting interests. In general, an enrolled agent is not permitted to represent a client before the Internal Revenue Service if such representation involves a conflict of interest.

A conflict of interest is deemed to exist if any of the following apply:

- The representation of one client will be directly adverse to another client; or
- There is a significant risk that the representation of one or more clients will be materially limited by the enrolled agent's responsibilities to another client, a former client or a third person, or by a personal interest of the enrolled agent.

Irrespective of the general prohibition against an enrolled agent's representation of a client in the case of conflicting interests, an enrolled agent may represent the client where such representation represents a conflict of interest if:

- The enrolled agent reasonably believes that –
    - He or she will be able to provide competent and diligent representation to each affected client, and
    - The representation is not prohibited by law; and
- Each affected client waives the conflict of interest and gives informed consent to such representation at the time the existence of the conflict of interest is known by the enrolled agent, and the waiver and consent is confirmed in writing by each affected client. Such written confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days following it.

The enrolled agent is required to retain copies of the written confirmations for at least 36 months following the date of the conclusion of the representation of the affected clients. Furthermore, the written confirmations must be provided to any officer or employee of the Internal Revenue Service if and when requested.

Prohibition on Negotiation of Client Refund Checks

Enrolled agents and other tax return preparers are prohibited from negotiating client refund checks. As provided by Internal Revenue Code §6695(f), a tax return preparer who endorses or otherwise negotiates a check issued to a taxpayer (other than the tax return preparer) is subject to a penalty of $500 with respect to each such check. The final regulations issued by the IRS governing Circular 230 that became effective June 12, 2014 interpret the application of the statute to include "directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the enrolled agent or any firm or other entity with whom the enrolled agent is associated."

Written Advice

Enrolled agents may give written advice concerning federal tax matters. When providing such advice, however, the enrolled agent must:

a) Base the advice on reasonable factual and legal assumptions;
b) Reasonably consider all relevant facts and circumstances;
c) Use reasonable efforts to ascertain the facts relevant to the matter for which the advice is given;
d) Not rely upon information received from the taxpayer or others if such reliance would be unreasonable;
e) Relate applicable law and authorities to the facts upon which the advice is being given; and
f) Not take into account that a tax return might not be audited in evaluating a federal tax matter.

In evaluating whether an enrolled agent's advice complies with these requirements, the IRS will apply a reasonable enrolled agent standard. By applying a "reasonable enrolled agent standard," all facts and circumstances are considered, with emphasis given to the additional risk caused by the enrolled agent's lack of knowledge of the taxpayer's particular circumstances.

Continuing Education

As an enrolled agent, you are required to obtain 72 hours of continuing education every three years, including six hours of ethics, in order to renew. In addition to any other hours of continuing education you obtain to meet the 72-hour requirement, you must obtain a minimum of 16 hours ***each year***, and ***two of those hours must be on ethics***.

An exception to the requirement for 16 hours of annual continuing education applies to an individual who receives initial enrollment during an enrollment cycle. Such an individual must complete two hours of qualifying continuing education credit for each month enrolled during the enrollment period. Enrollment for any part of an enrollment year is considered enrollment for the entire year.

The IRS may routinely contact a random sample of EAs, requesting copies of their continuing education (CE) certificates of completion for the past three years. Contacted EAs are asked to mail or fax the documents within 30 days.

CPE Course Requirements

In order to be considered qualifying continuing education for an enrolled agent, a course of learning must meet certain requirements. It is required to:

- Be a qualifying continuing education program designed to enhance professional knowledge in federal taxation or federal tax-related matters. Such qualifying continuing education programs may be comprised of current subject matter in:
    - Federal taxation, or
    - Federal tax-related matters, including –
        - Accounting,
        - Tax return preparation software,
        - Data security and identity theft topics,
        - Taxation, or
        - Ethics; and
- Be a qualifying continuing education program consistent with the Internal Revenue Code and effective tax administration.

Types of Qualifying Programs

A formal, correspondence or individual study program may be considered a qualifying program of continuing education provided it meets other applicable criteria. Accordingly a qualifying continuing education program may:

- Be a *formal program* if it –
    - Requires attendance and provides attendees with a certificate of attendance,
    - Is conducted by a qualified instructor, discussion leader or speaker,
    - Provides or requires –
        - A written outline,
        - Textbook, or
        - Suitable electronic educational materials, and
    - Satisfies the requirements for a qualified continuing education program as detailed in Treasury Department Circular 230 §10.9;
- Be a *correspondence or individual study program* if it –
    - Requires participant registration by the continuing education provider,
    - Provides a way to measure successful participant completion, such as by an examination, and includes issuance of a certificate of completion,
    - Provides –
        - A written outline,
        - Textbook, or
        - Suitable electronic educational materials, and
    - Satisfies the requirements for a qualified continuing education program as detailed in Treasury Department Circular 230 §10.9; or
- *Involve serving as an instructor*, discussion leader or speaker of an educational program meeting the requirements necessary to be considered qualifying continuing education as described in Treasury Department Circular 230 §10.6(f), discussed below. Such services as an instructor, discussion leader or speaker will provide the person so acting –

- One hour of continuing education credit for each contact hour at an educational program,
- A maximum of two hours of continuing education credit for actual subject preparation time for each completed contact hour, and
- With a maximum continuing education credit of six hours annually.

(Note: An instructor, discussion leader or speaker who makes more than one presentation on the same subject matter during an enrollment cycle will receive continuing education credit for only one such presentation for the cycle.)

Meeting Circular 230 §10.9 Criteria

A continuing education program will satisfy the requirements for a qualified continuing education program pursuant to Treasury Department Circular 230 §10.9 if –

- It is developed by persons qualified in the subject matter,
- It is current,
- Its content is presented by qualified instructors, discussion leaders and speakers,
- It includes some means for evaluating the program content and presentation,
- It offers certificates of completion bearing a current qualified continuing education program number to participants successfully completing the program, and
- Records are maintained to verify participant completion of the program for a period of four years following completion.

Tax Shelters

Although taxpayers have every right to reduce their tax liability by legitimate means—taxpayers are not required to pay more in taxes than they owe after taking all deductions and credits for which they are eligible, in other words—they possess no right to reduce it by illegal means. Illegally reducing tax liability is referred to as "tax evasion."

Among the illegal methods that may be employed by a taxpayer in an attempt to reduce tax liability is the use of an abusive tax shelter. Historically, such abusive tax shelters have promised to lower or eliminate federal income tax liability through various methods, including (but not limited to):

- Reducing or eliminating a taxpayer's income subject to tax;
- Depreciating the taxpayer's personal residence;
- Deducting a taxpayer's personal expenses paid by a third party, i.e. a trust or other entity; and
- Eliminating or reducing a taxpayer's self-employment tax.

As reported by the IRS, multiple flow-through entities are commonly used as part of a taxpayer's scheme to evade taxes. These schemes are designed to conceal the true nature and ownership of taxpayers' taxable income and/or assets and may use:

- Limited Liability Companies (LLCs),
- Limited Liability Partnerships (LLPs),
- International Business Companies (IBCs),
- Foreign financial accounts,
- Offshore credit/debit cards, and
- Other similar instruments.

Economic Substance Doctrine

The economic substance doctrine is central to the identification of abusive tax shelters. An abusive tax shelter is one that has no objective other than to avoid paying what is owed. It is an arrangement or a transaction designed to reduce a taxpayer's tax liability:

1. Without having a substantial purpose (other than its federal income tax effects), and
2. Without offering the taxpayer any meaningful change in economic position (apart from its federal income tax effects) for entering into it.

In short, an abusive tax shelter has no economic substance and fails to meet the requirements of the economic substance doctrine.

Term and Renewal of Enrolled Agent Status

An enrolled agent must renew his or her active enrollment periodically and is required to meet the continuing education requirements addressed above in order to renew.

Renewal Cycles

Enrolled agents must renew during every renewal cycle. A renewal cycle is three years, and enrolled agent renewal is staggered, based on the individual's SSN or TIN so that approximately 1/3rd of enrolled agents must renew each year.

Thus, renewal must be accomplished according to the following schedule and each three years thereafter:

SSN/TIN Ends in	Enrollment Cycle Ends	Due Date of Renewal	Effective Renewal Date
4, 5 or 6	December 31, 2019	January 31, 2020	April 1, 2020
7, 8 or 9	December 31, 2020	January 31, 2021	April 1, 2021
0, 1, 2 or 3	December 31, 2021	January 31, 2022	April 1, 2022

So, an enrolled agent whose social security number or tax identification number ends in 4, 5 or 6 must apply for renewal between November 1, 2019 and January 31, 2020, and the renewal period runs from April 1, 2020 through March 31, 2023. Similarly, if the enrolled agent's SSN or TIN ends in 7, 8 or 9, renewal application must be made between November 1, 2020 and January 31, 2021 in order for a three-year renewal to be effective on April 1, 2021.

Individuals who receive initial enrolled agent enrollment after November 1st and before April 2nd of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following their receipt of their initial enrollment.

Following review and approval of the individual's renewal, the Internal Revenue Service:

- Will notify the individual of the renewal, and
- Will issue the individual a card or certificate evidencing current enrolled agent status.

Prompt Disposition of Matters before the IRS

Individuals subject to Circular 230, including enrolled agents, are prohibited from delaying the prompt disposition of any matter before the IRS. The prohibition against delay refers to any matter before the IRS, including the application or interpretation of:

- A revenue provision of the Internal Revenue Code;
- 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
    - The person's obligation to file returns; or
- Any other law or regulation administered by the IRS.

Return of Client Records

It is not uncommon for a client to provide an enrolled agent who is preparing an income tax return with various records to substantiate his or her income, expenditures, deductions, etc. In general, when the client requests the return of such records the enrolled agent must promptly do so.

Treasury Department Circular 230 addresses the requirement for an enrolled agent's return of client records and provides that, although an enrolled agent may retain copies of the records that are returned to a client, the enrolled agent must promptly return any and all requested records to the client that are necessary for the client to comply with his or her federal tax obligations.

An enrolled agent's reluctance to return a client's records may stem from any disagreement, including the existence of a dispute over fees payable for the enrolled agent's work. However, the existence of such a dispute generally does not relieve the enrolled agent of his responsibility to return client records.

However, if applicable state law permits the enrolled agent to retain client records in the case of a dispute over fees for services rendered, the enrolled agent need only return those records that must be attached to the taxpayer's income tax return. In such a case, the enrolled agent must provide the client with reasonable access to review and copy any additional records of the client retained by the enrolled agent that are necessary for the client to comply with his or her federal tax obligations.

Nature of Client Records

For purposes of the requirement that an enrolled agent return client records, irrespective of the existence of a dispute over fees, "records of the client" receives a broad interpretation. The term "records of the client" includes:

- All documents or written or electronic materials provided to the enrolled agent, or obtained by the enrolled agent in the course of the enrolled agent's representation of the client, that ***pre-existed*** the retention of the enrolled agent by the client;
- Materials that were ***prepared by the client*** or a third party (not including an employee or agent of the enrolled agent) at any time and provided to the enrolled agent with respect to the subject matter of the representation; and
- Any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the enrolled agent, or his or her employee or agent, that was presented to the client with respect to a prior representation if the document is necessary for the taxpayer to comply with his or her current federal tax obligation.

However, the term "records of the client" does not include any of the following documents prepared by the enrolled agent or his or her firm if the enrolled agent is withholding such document pending the client's performance of its contractual obligation to pay fees:

- Tax returns;
- Claims for refund;
- Schedules;
- Affidavits;
- Appraisal; or
- Any other document.

PTIN Requirements

PTIN is an acronym for Preparer Tax Identification Number. A PTIN must be obtained from the IRS by all enrolled agents who are compensated for preparing or assisting in the preparation of federal tax returns, claims for refund and other tax forms (with certain exceptions[3]) submitted to the IRS. An enrolled agent may not prepare federal tax returns or other tax forms, other than those exempted, for compensation without a PTIN.

Obtaining a New PTIN

New PTINs may be applied for online in about 15 minutes[4] or on paper by filing IRS Form W-12 IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal. Regardless of the method used, an applicant for a PTIN should have the following available:

- Social Security Number;
- Personal information, i.e. name, mailing address and date of birth;
- Business information, i.e. name, mailing address and telephone number;
- Previous year's individual tax return;
- Explanations for any felony convictions;
- Explanations for problems with applicant's U.S. individual or business tax obligations, if any; and
- If applicable, any U.S.-based professional certification information including –
    - Certification number,
    - Issuing jurisdiction, and
    - Expiration date.

[3] PTIN exceptions may be found at https://www.irs.gov/tax-professionals/frequently-asked-questions-do-i-need-a-ptin.
[4] PTINs may be applied for online at https://rpr.irs.gov/datamart/login.do.

The steps required to apply for a PTIN online are as follows:

1. Create your account at **Create an Online PTIN Account** by providing your name, email address and security question information. The system will then email a temporary password to you. When you return to enter your information on the PTIN application, you will be required to change the password.
2. Apply for your PTIN by completing the online application by providing the requested information.
3. Upon completing your online application, your PTIN will be provided online.

A PTIN also may be applied for by filing a completed IRS Form W-12[5] and mailing it to:

IRS Tax Pro PTIN Processing Center
104 Brookeridge Drive #5000
Waterloo, IA 50702

Unlike obtaining a PTIN by applying online, a process that would normally result in getting a PTIN in about 15 minutes, you should allow 4 to 6 weeks for the processing of paper Form W-12.

Renewing a PTIN

All PTINs expire on December 31st each year and must be renewed. An enrolled agent may renew a PTIN online for the following year during PTIN renewal season which begins on approximately October 16th by following these steps:

1. Log into your online PTIN account. The IRS provides online information on how to access your PTIN account[6].
2. Complete the online renewal application, verify the personal information and answer a few new questions.
3. Upon completion of the online renewal application, you will receive confirmation that the PTIN has been renewed.

Alternatively, just as a PTIN may be *initially* applied for, an enrolled agent may *renew* a PTIN through the mail by completing and sending IRS Form W-12 to the IRS Tax Pro PTIN Processing Center.

Enrolled Agent Supervisory Responsibilities

An enrolled agent charged with the responsibility to supervise others is expected to determine (a) that the firm has procedures in place for compliance with appropriate parts of Circular 230 and (b) that the procedures are followed. Circular 230 §10.36 addresses the subjects of individuals who have supervisory responsibilities (or are identified by the IRS as having them) and the supervisory compliance failures for which they will be subject to discipline.

Identification of Supervisor

Specifically, Circular 230 states, with respect to supervisory duties, that enrolled agents subject to Circular 230 who have the authority and responsibility for overseeing a firm's practice governed by the Circular—practice that includes providing written advice concerning federal tax matters and preparation of various documents, such as tax returns and claims for refund, for submission to the IRS—must appropriately exercise their authority to help ensure compliance.

Accordingly, the supervisor must take reasonable steps to ensure that the firm has adequate procedures for members, associates and employees to comply with Circular 230 concerning the:

- Rules governing authority to practice included in subpart A;
- Duties and restrictions relating to practice before the Internal Revenue Service addressed in subpart B; and
- Sanctions for violation of the regulations discussed in subpart C.

If the firm fails to identify the person(s) having supervisory authority, the IRS may identify one or more individuals as having such authority and responsibility for compliance.

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[5] IRS Form W-12 may be accessed at https://www.irs.gov/pub/irs-pdf/fw12.pdf.

[6] Directions for accessing a PTIN account may be accessed at https://www.irs.gov/tax-professionals/ptin-top-faq-1.

Requirement to Supervise

A supervisor who has been so designated by a firm (or by the IRS if no individual has been designated by the firm) will be subject to discipline for failing to comply with his or her supervisory responsibilities if the identified supervisory individual:

- Through willfulness, recklessness or gross incompetence –
  - fails to take reasonable steps to ensure that the firm has adequate procedures, ***and***
  - one or more members, associates or employees are or have been engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with the requirements of Circular 230;
- Through willfulness, recklessness or gross incompetence –
  - fails to take reasonable steps to ensure that firm procedures in effect are properly followed, ***and***
  - one or more members, associates or employees are or have been engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with the requirements of Circular 230; or
- Knows or should have known that one or more members, associates or employees are or have been engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with the requirements of Circular 230 ***and*** the individual, through willfulness, recklessness or gross incompetence fails to take prompt action to correct the noncompliance.

Tax Adviser Best Practices

Tax advisers, including enrolled agents, are encouraged to provide clients with the highest quality representation by adhering to certain "best practices" when providing advice and when preparing or assisting in the preparation of a submission to the IRS. Best practices include:

- *Communicating clearly* with the client concerning the terms of the engagement. In other words, the adviser should –
  - Determine the client's anticipated purpose for obtaining the advice and its intended use by the client, and
  - Have a clear understanding with the client regarding the scope and form of the advice or assistance being rendered;
- *Performing appropriate analysis* that includes the following steps –
  - Establishing the facts,
  - Determining which facts are relevant,
  - Evaluating the reasonableness of any assumptions or representations,
  - Relating applicable law to the relevant facts, and
  - Arriving at a conclusion supported by the law and the facts;
- *Advising the client regarding the import* of the conclusions reached, including whether a taxpayer may avoid accuracy-related penalties under the IRC if the taxpayer acts in reliance on the advice; and
- *Acting fairly and with integrity* in practice before the IRS.

Procedures to Ensure Best Practices Used

A tax adviser responsible for overseeing a firm's practice of providing advice concerning federal tax issues or assisting in the preparation of submissions to the IRS should take reasonable steps to ensure that the firm's procedures are consistent with the best practices for tax advisers.

Summary

Various duties and restrictions are imposed on enrolled agents engaged in their professional activities. Among the important duties and restrictions are those relating to an enrolled agent's:

- Response to IRS requests for information,
- Knowledge of client omissions,
- Employing or accepting assistance from former IRS employees and disbarred/suspended persons,
- Solicitation of business,
- Requirement for diligence with respect to accuracy,
- Dealing with conflicts of interest,

- Negotiation of client refund checks,
- Providing written advice,
- Continuing education,
- Tax shelters,
- The term and renewal of enrolled agent status,
- Prompt disposition of matters before the IRS,
- Return of client records,
- PTIN requirements and
- Supervisory responsibilities.

Enrolled agents are expected to meet their professional responsibilities with integrity. With respect to the solicitation of business, that requirement for acting with integrity prohibits enrolled agents from making any statement or claim in connection with an Internal Revenue Service matter that is false, fraudulent, misleading, deceptive or coercive. It also requires considerable transparency as to disclosures of fees and other costs to be borne by clients. Fee information communicated to clients and potential clients must be retained by the enrolled agent for at least 36 months.

The Internal Revenue Service may request information or records from an enrolled agent. In such a case, the enrolled agent must promptly provide them unless he or she believes in good faith and on reasonable grounds that the records or information are privileged. If the requested material is not in the enrolled agent's possession or subject to his or her control, the enrolled agent must promptly notify the Internal Revenue Service, provide information the enrolled agent has concerning who has possession or control of the requested records or information and ask the client for information concerning the location of the requested material. If the Internal Revenue Service requests information about an alleged violation of the regulations, the enrolled agent must provide any relevant information. In addition, the enrolled agent must testify regarding the information provided, unless he or she in good faith and on reasonable grounds believes that the information is privileged.

If an enrolled agent believes a client has failed to comply with the revenue laws or made an error in a document submitted or executed under the U.S. revenue laws, he or she must advise the client of the error or omission and of its consequences.

Enrolled agents are also expected to exercise due diligence as to accuracy in their professional activities. That due diligence requirement applies in their activities regarding Internal Revenue Service matters and with respect to determining the correctness of representations made by the enrolled agent to the Department of the Treasury and to clients as to matters administered by the Internal Revenue Service.

Enrolled agents are required to return a client’s records to him or her when requested. That requirement for the prompt return of client records applies despite any dispute between the client and the enrolled agent concerning fees. Although an enrolled agent may retain copies of the records returned to a client, the enrolled agent must promptly return any and all requested records to the client that are necessary for the client to comply with his or her federal tax obligations.

Enrolled agents are not permitted to represent a client before the Internal Revenue Service if such representation involves a conflict of interest unless certain requirements are met. The requirements are that the enrolled agent reasonably believes he or she will be able to provide competent and diligent representation to each affected client, the client representation is not prohibited by law, and each affected client waives the conflict of interest and gives informed consent. The informed consent must be confirmed in writing by each affected client within a reasonable period of time but no later than 30 days following client consent. Copies of the written documents evidencing client consent must be retained by the enrolled agent for at least 36 months following the date of the conclusion of the representation of the affected clients.

Chapter 2 Review Questions

1. What is the minimum number of calendar days that must pass following the last date on which an enrolled agent published a schedule of fees before he or she may charge more than the rate published?
   a. 10 days
   b. 15 days
   c. 30 days
   d. 45 days

2. Jason published fee information to his clients and prospective clients. What is the minimum period he must retain copies of the communicated fee information?
   a. 60 days
   b. 36 months
   c. 1 year
   d. 5 years

3. What must an enrolled agent do if he or she knows the client has intentionally omitted relevant information on a tax return?
   a. Nothing if he believes the client knows of the omission
   b. Advise the client how IRS detection of the omission can be avoided
   c. Advise the client how to minimize any possible penalties
   d. Inform the client of the omission and its consequences

4. Arthur, an enrolled agent, has a conflict of interest in his representation of a new client. In order to be able to represent the new client, Arthur has telephoned each client that would be affected by his representing the new client, and each has verbally waived the conflict of interest. How soon following their verbal waiver must Arthur obtain written confirmation from each of these affected clients?
   a. No later than 30 days following the clients' granting of informed consent
   b. No later than 60 days following the clients' granting of informed consent
   c. No later than 90 days following the clients' granting of informed consent
   d. Written confirmation is not a requirement

Chapter 3:
Sanctionable Acts & Sanctions

Learning Objectives

After studying this chapter, you will be able to:

1. List the types of conduct considered disreputable;
2. Describe the monetary and non-monetary sanctions that may be imposed by the Office of Professional Responsibility on an enrolled agent for engaging in sanctionable acts;
3. Identify the defining characteristics of a frivolous submission; and
4. Recognize the badges of fraud.

Introduction

Enrolled agents and others permitted to practice before the IRS are expected to act with integrity when engaged in their professional activities and must avoid conduct deemed to be disreputable. Such practitioners are subject to various non-monetary and monetary sanctions imposed by the Office of Professional Responsibility for their failure to do so.

This chapter will identify certain types of conduct considered disreputable and will identify the sanctions that may be imposed for engaging in them. In addition, it will discuss what is meant by a frivolous submission and will list a range of indicators of possible fraudulent activity, known as "badges of fraud."

Disreputable Conduct

The types of conduct considered disreputable for which an enrolled agent may be sanctioned cover a wide range of offenses. The conduct identified in Treasury Department Circular 230 deemed to be disreputable includes:

- Conviction of any –
    - Criminal offense under the federal tax laws;
    - Criminal offense involving dishonesty or breach of trust;
    - Felony under federal or state law for which the conduct involved renders the enrolled agent unfit to practice before the Internal Revenue Service;
- Giving false or misleading information, or participating in the giving of false or misleading information to the Department of the Treasury, or to any tribunal authorized to pass upon federal tax matters, knowing the information to be false or misleading. The term "information," when used in this context includes –
    - Facts or other matters contained in testimony,
    - Federal tax returns,
    - Financial statements,
    - Applications for enrollment,
    - Affidavits,
    - Declarations, and
    - Any other document or statement;
- Solicitation of employment –
    - In a manner that violates the solicitation rules contained in Treasury Department Circular 230,
    - Through the use of false or misleading representations with the intent to deceive a client or prospective client, or
    - By intimating the enrolled agent is able improperly to obtain special consideration or action from the Internal Revenue Service;

- Willfully failing to file a federal tax return in violation of the federal tax laws, or willfully evading, attempting to evade or participating in any way intended to evade an assessment or payment of federal tax;
- 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 their payment;
- 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;
- 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;
- Disbarment or suspension from practice as an attorney, CPA, public accountant or actuary by any duly constituted authority;
- Knowingly aiding and abetting another person to practice before the Internal Revenue Service during such other person's period of suspension, disbarment or ineligibility;
- Contemptuous conduct in connection with practice before the Internal Revenue Service including –
    - Using abusive language,
    - Knowingly making false accusations or statements, or
    - Circulating or publishing malicious or libelous matter;
- Giving a false opinion, knowingly, recklessly, or through gross incompetence;
- Willfully failing to sign a tax return prepared by the enrolled agent when the enrolled agent's signature is required by federal tax laws unless the failure is due to reasonable cause and not due to willful neglect;
- Willfully disclosing or using a tax return or tax return information in a manner not authorized by the Internal Revenue Code;
- Willfully failing to file a tax return prepared by the enrolled agent on magnetic or other electronic media when the enrolled agent is required to do so;
- Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the enrolled agent does not possess a current or otherwise valid preparer tax identification number (PTIN) or other prescribed identifying number; and
- Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the enrolled agent is authorized to do so.

Sanctions Imposed by the Office of Professional Responsibility

The Commissioner authorized the Office of Professional Responsibility (OPR) to impose both monetary and non-monetary sanctions on any enrolled agent who violates the published regulations governing practice before the Internal Revenue Service. In accordance with Treasury Department Circular 230, after notice and an opportunity for a proceeding, the OPR may impose such sanctions if the enrolled agent:

- Is shown to be incompetent or disreputable;
- Fails to comply with the regulations; or
- Willfully and knowingly misleads or threatens a client or prospective client with the intent to defraud.

Non-Monetary Sanctions

The non-monetary sanctions that may be imposed on an enrolled agent who is shown to be incompetent or disreputable, who fails to comply with applicable regulations, or who misleads or threatens with the intent to fraud are:

- Censure;
- Suspension; or
- Disbarment.

Censure

Of the three non-monetary sanctions that may be imposed, the least punitive is censure. Censure is a public reprimand of the enrolled agent and is generally a resolution condemning a person for misconduct. It constitutes an expression of strong disapproval and harsh criticism. Thus, although censure is the least punitive, it is intended to send a strong message to the enrolled agent and his or her colleagues concerning the enrolled agent's fitness.

Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS. However the OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Suspension

Suspension involves the temporary banning of the enrolled agent from practice before the Internal Revenue Service. An individual who is suspended is not eligible to represent taxpayers before the Internal Revenue Service during the term of the suspension.

Disbarment

Similar to suspension, disbarment makes the enrolled agent ineligible to practice before the Internal Revenue Service. Unlike suspension, however, disbarment may or may not be temporary. In many cases, a disbarred enrolled agent may reapply for the privilege to again represent clients before the Internal Revenue Service after a specified period during which he or she may not practice. Disbarment is generally the most severe non-monetary sanction that may be imposed on an enrolled agent by the OPR.

Monetary Sanctions

In addition to or in lieu of non-monetary sanctions, the regulations authorize the imposition of monetary penalties on any enrolled agent who engages in conduct subject to sanction. Furthermore, if the enrolled agent subject to sanction was acting on behalf of an employer or other entity in connection with the conduct giving rise to the penalty, a monetary penalty on the employer or other entity may be imposed if it knew, or reasonably should have known, of such conduct. In other words, if an enrolled agent's employer knew that the enrolled agent was engaging in activities constituting a violation of IRS regulations, it would also be subject to monetary sanctions.

Amount of Monetary Penalty

The amount of monetary penalty that may be imposed on an enrolled agent for disreputable conduct is limited. According to Treasury Department Circular 230, the amount of the penalty will not exceed the gross income derived or to be derived from the enrolled agent's conduct giving rise to the penalty. The penalty applicable to paid tax preparers who engage in willful or reckless conduct is equal to the greater of $5,000 or 75% of the preparer's income derived or to be derived from the return.

Any money penalty imposed on an enrolled agent may be in addition to or in place of suspension, disbarment or censure and may be in addition to any penalty imposed on an employer or other entity.

Frivolous Submissions

The word "frivolous" is commonly used and generally understood. However, a definition of the word when used in connection with the submission of tax returns and documents to the IRS may be appropriate. When used in that context, a frivolous tax return or frivolous document is one that is:

- Of little value or importance; or
- Not properly serious.

Not surprisingly, Circular 230—in addressing the standards that apply to the filing of tax returns and other documents—prohibits filing or advising a client to file a document that is frivolous. Specifically, practitioners are advised as follows, with respect to frivolous filings:

(1) A practitioner may not advise a client to take a position…unless the position is not frivolous.
(2) A practitioner may not advise a client to submit a document…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.[7]

Fraudulent Transactions

Fraud is generally defined as wrongful or criminal deception intended to result in personal or financial gain. In short, it is dishonesty perpetrated for gain whether done by a taxpayer, a tax preparer or anyone else.

The Internal Revenue Manual §25.1.2[8]—referred to as the "Fraud Handbook"—, in addition to providing other insights with respect to fraud and its detection, includes a red flag list of categories of fraud indicators known as the badges of fraud. The badges of fraud are signs that actions *may* have been done for the purpose of deceit, concealment or to make things seem other than what they are. Such indications do not establish that a particular action was done. They may, however, suggest that additional investigation be done. That suggestion, however, may be sufficient cause for an auditor to refer the case for additional investigation and possible criminal charges.

Badges of Fraud

The Fraud Handbook portion of the Internal Revenue Manual identifies six categories of examples of fraud indicators. Each category, although not intended to be all-inclusive, includes various actions that *could* possibly indicate the existence of fraud. When they are detected on audit, they often result in an auditor's decision to dig deeper and, depending on what is found, may result in a referral for additional investigation.

The categories are:

- Income;
- Expenses or deductions;
- Books and records;
- Allocations of income;
- Taxpayer conduct; and
- Methods of concealment.

The fraud indicators in each of the categories are as shown in the sections below.

Income

In an audit, an auditor typically obtains the taxpayer's bank statements and statements from other accounts, such as brokerage accounts, and may attempt to match the declared income on the return with the deposits shown on the statements. When deposits exceed declared income, some explanation is usually required that identifies the deposits as resulting from an inheritance, a gift, a sale of other assets, etc.

The badges of fraud related to a taxpayer's income are:

A. Omitting specific items where similar items are included.
B. Omitting entire sources of income.
C. Failing to report or explain substantial amounts of income identified as received.
D. Inability to explain substantial increases in net worth, especially over a period of years.
E. Substantial personal expenditures exceeding reported resources.
F. Inability to explain sources of bank deposits substantially exceeding reported income.
G. Concealing bank accounts, brokerage accounts, and other property.
H. Inadequately explaining dealings in large sums of currency, or the unexplained expenditure of currency.
I. Consistent concealment of unexplained currency, especially in a business not routinely requiring large cash transactions.
J. Failing to deposit receipts in a business account, contrary to established practices.

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[7] Treasury Department Circular 230, §10.34(b).
[8] The Fraud Handbook may be accessed at https://www.irs.gov/irm/part25/irm_25-001-002.html.

K. Failing to file a tax return, especially for a period of several years, despite evidence of receipt of substantial amounts of taxable income.
L. Cashing checks, representing income, at check cashing services and at banks where the taxpayer does not maintain an account.
M. Concealing sources of receipts by false description of the source(s) of disclosed income, and/or nontaxable receipts.

Expenses or Deductions

Deductions that are significantly overstated and/or unusual are indicators that an error or fraud may have occurred. In addition, an attempt to claim that nondeductible personal expenses are deductible business expenses will rightly cause an auditor to search further. Expenses or deductions shown on a tax return or other document that may suggest the possibility of fraud include:

A. Claiming fictitious or substantially overstated deductions.
B. Claiming substantial business expense deductions for personal expenditures.
C. Claiming dependent status for nonexistent, deceased, or self-supporting persons. Providing false or altered documents, such as birth certificates, lease documents, school/medical records, for the purpose of claiming the education credit, additional child tax credit, earned income tax credit (EITC), or other refundable credits.
D. Disguising trust fund loans as expenses or deductions.

Books and Records

A taxpayer intent on illegally hiding income may attempt to conceal the accounts used to hold undeclared income. However, in reviewing the taxpayer's checkbook register, an auditor's identification of a fund transfer having no clear or obvious source may suggest that the taxpayer has failed to disclose other accounts, such as a stock brokerage account, used to store undeclared income.

Among the identified badges of fraud involving a taxpayer's books and records are the following:

A. Multiple sets of books or no records.
B. Failure to keep adequate records, concealment of records, or refusal to make records available.
C. False entries, or alterations made on the books and records; back-dated or post-dated documents; false invoices, false applications, false statements, or other false documents or applications.
D. Invoices are irregularly numbered, unnumbered or altered.
E. Checks made payable to third parties that are endorsed back to the taxpayer. Checks made payable to vendors and other business payees that are cashed by the taxpayer.
F. Variances between treatment of questionable items as reflected on the tax return, and representations within the books.
G. Intentional under- or over-footing of columns in journal or ledger.
H. Amounts on tax return not in agreement with amounts in books.
I. Amounts posted to ledger accounts not in agreement with source books or records.
J. Journalizing questionable items out of correct account.
K. Recording income items in suspense or asset accounts.
L. False receipts to donors by exempt organizations.

Allocations of Income

Because of the progressive nature of income taxes, allocating income or deductions from a taxpayer with a higher income to one with a lower income, or vice versa, may result in an overall reduction of tax liability or increase in tax credits. When such reallocation is accomplished legally, it may constitute sensible tax planning. However, when done illegally it may suggest the possibility of fraud requiring additional investigation.

Badges of fraud related to allocation of income include:

A. Distribution of profits to fictitious partners.
B. Inclusion of income or deductions in the tax return of a related taxpayer, when tax rate differences are a factor.

Conduct of Taxpayer

Unusual conduct of a taxpayer whose income tax returns are being audited—conduct such as refusing to answer questions, lying, being repeatedly unavailable to meet with the auditor, for example—may suggest the taxpayer is attempting to conceal something. Such conduct is a badge of fraud that can be expected to alert an auditor.

Among the badges of fraud involving taxpayer conduct are the following:

A. False statement about a material fact pertaining to the examination.
B. Attempt to hinder or obstruct the examination. For example, failure to answer questions; repeated cancelled or rescheduled appointments; refusal to provide records; threatening potential witnesses, including the examiner; or assaulting the examiner.
C. Failure to follow the advice of accountant, attorney or return preparer.
D. Failure to make full disclosure of relevant facts to the accountant, attorney or return preparer.
E. The taxpayer's knowledge of taxes and business practices where numerous questionable items appear on the tax returns.
F. Testimony of employees concerning irregular business practices by the taxpayer.
G. Destruction of books and records, especially if just after examination was started.
H. Transfer of assets for purposes of concealment, or diversion of funds and/or assets by officials or trustees.
I. Pattern of consistent failure over several years to report income fully.
J. Proof that the tax return was incorrect to such an extent and in respect to items of such magnitude and character as to compel the conclusion that the falsity was known and deliberate.
K. Payment of improper expenses by or for officials or trustees.
L. Willful and intentional failure to execute pension plan amendments.
M. Backdated applications and related documents.
N. False statements on Tax Exempt/Government Entity (TE/GE) determination letter applications.
O. Use of false social security numbers.
P. Submission of false Form W-4.
Q. Submission of a false affidavit.
R. Attempt to bribe the examiner.
S. Submission of tax returns with false claims of withholding (Form 1099-OID, Form W-2) or refundable credits (Form 4136, Form 2439) resulting in a substantial refund.
T. Intentional submission of a bad check resulting in erroneous refunds and releases of liens.
U. Submission of false Form W-7 information to secure Individual Taxpayer Identification Number (ITIN) for self and dependents.

Methods of Concealment

The ways individuals conceal important information and/or documents is limited only by their imagination. However, examples of badges of fraud that may indicate material information or documents have been concealed include:

A. Inadequacy of consideration.
B. Insolvency of transferor.
C. Asset ownership placed in other names.
D. Transfer of all or nearly all of debtor's property.
E. Close relationship between parties to the transfer.
F. Transfer made in anticipation of a tax assessment or while the investigation of a deficiency is pending.
G. Reservation of any interest in the property transferred.
H. Transaction not in the usual course of business.
I. Retention of possession or continued use of asset.
J. Transactions surrounded by secrecy.
K. False entries in books of transferor or transferee.
L. Unusual disposition of the consideration received for the property.
M. Use of secret bank accounts for income.
N. Deposits into bank accounts under nominee names.
O. Conduct of business transactions in false names.

Summary

The Office of Professional Responsibility may impose monetary and non-monetary sanctions on a practitioner who is incompetent or engages in disreputable conduct, fails to comply with applicable regulations or willfully and knowingly misleads or threatens a client or prospective client with the intent to defraud. Non-monetary sanctions include censure, suspension and disbarment. Monetary penalties, which may be imposed in addition to or in lieu of non-monetary penalties, are generally limited in amount to the gross income derived or to be derived from the practitioner's conduct giving rise to the penalty.

Tax evasion and other illegal activity may be detected during a tax audit through the use of badges of fraud, red flags indicating possible fraud. The IRS publishes a list of such badges, and their detection may result in additional scrutiny and give rise to possible criminal charges.

Chapter 3 Review Questions

1. A public reprimand of an enrolled agent by the Office of Professional Responsibility is referred to as a:
   a. Censure
   b. Suspension
   c. Disbarment
   d. Monetary penalty

2. Which of the following is NOT considered to be disreputable conduct for which the Treasury Department may impose sanctions on an enrolled agent?
   a. Dishonesty
   b. Breach of trust
   c. A felony conviction
   d. Violating fee schedule rules

3. Which of the following non-monetary sanctions does NOT affect an enrolled agent's eligibility to represent taxpayers before the IRS?
   a. Disbarment
   b. Suspension
   c. Censure
   d. The imposition of any non-monetary sanction affects an enrolled agent's eligibility to represent taxpayers before the IRS

4. What is the maximum monetary penalty that may be imposed on an enrolled agent by the Office of Professional Responsibility?
   a. $10,000
   b. An amount equal to the gross income derived from the practitioner's conduct that gives rise to the penalty
   c. No monetary penalty may be imposed
   d. No limit applies to the monetary penalty that may be imposed

5. Which of the following would NOT necessarily be considered contemptuous conduct that is deemed disreputable under the regulations governing practice before the Internal Revenue Service?
   a. Using abusive language
   b. Making false accusations
   c. Publishing libelous matter
   d. Advising a client to submit a document to the IRS that omits information

Glossary

Censure	A public reprimand of a practitioner generally taking the form of a resolution condemning a person for misconduct.
Conflict of interest	A conflict of interest is deemed to exist if any of the following apply: • The representation of one client will be directly adverse to another client; or • 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.
Disbarment	The most severe non-monetary sanction that may be imposed on a practitioner by the Treasury Department. It makes the practitioner ineligible to practice before the Internal Revenue Service and may be permanent or temporary.
Due diligence	Due diligence is the care a reasonable person could be expected to exercise in order to avoid harm to other persons or their property. Essentially, it is the degree of attention or care that would be reasonably expected of a person in a given situation.
Fee schedule	Practitioners may publish the following information with respect to fees charged: • Fixed fees for specific routine services; • Hourly rates; • Range of fees for particular services; and • Fees charged, if any, for an initial consultation.
Good faith	Actions engaged in with an absence of malice or any intention to deceive. It is characterized by good intentions and sincerity.
Practitioner (Internal Revenue Service)	A category of persons that includes attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and other qualified tax return preparers representing clients before the Internal Revenue Service.
Suspension	Temporary banning of a practitioner from practice before the Internal Revenue Service. An individual who is suspended is not eligible to represent

taxpayers before the Internal Revenue Service during the term of the suspension.

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Review Question Answers

Chapter 1 Review Questions

1. Which of the following activities performed by a CPA on behalf of a client does NOT require that a written declaration of qualification and authorization be submitted to the IRS?

    a. Incorrect. A CPA's corresponding with the IRS on behalf of a client requires that the CPA file a written declaration stating the CPA is qualified as a CPA and authorized to represent the client.
    b. Incorrect. The preparation and filing of documents with the IRS on behalf of a client is practice before the IRS that requires the CPA to file a written declaration of qualification and authority.
    c. **Correct**. An exception to the requirement to file a written declaration in order to practice before the IRS has to do with a CPA's rendering written advice. Although such rendering of written advice is considered practice before the IRS, a CPA not currently suspended or disbarred from practice before the IRS is ***not*** required to file a written declaration before providing such advice.
    d. Incorrect. Although a CPA's practice on behalf of a client in connection with a matter before the IRS generally requires that the CPA submit a written declaration concerning the CPA's authority and qualification, one of them does not.

2. In addition to participating in the Annual Filing Season Program in the year that a client's tax return was prepared, a tax return preparer who is not a CPA, enrolled agent or attorney and who is interested in representing a client before the IRS concerning a return prepared and signed by the preparer must:

    a. **Correct**. To have limited representation rights for any return or claim for refund prepared and signed after December 31, 2015, return preparers must participate in the Annual Filing Season Program in both the year of return preparation and the year of representation.
    b. Incorrect. Although a CPA or attorney seeking to represent a client before the IRS must submit a written declaration of qualification and authority to represent the client, such a written declaration is not ordinarily required by a preparer in connection with a tax return prepared by him or her.
    c. Incorrect. While individuals may represent a member of his or her immediate family before the IRS, a familial relationship is not necessary in the case of a tax preparer.
    d. Incorrect. A tax preparer's compensation is not an issue with respect to his or her ability to represent the client before the IRS.

Chapter 2 Review Questions

1. What is the minimum number of calendar days that must pass following the last date on which an enrolled agent published a schedule of fees before he or she may charge more than the rate published?

    a. Incorrect. The intention of the ethical rule relative to an enrolled agent's charging fees in excess of a published schedule is designed to avoid client confusion and resulting misunderstanding between the enrolled agent and client, and a enrolled agent's charging more than rates published only 10 days before would violate that rule and its intention.

b. Incorrect. Charging more than rates published only 15 days previously is a violation of IRS rules.

c. **Correct**. An enrolled agent is not permitted to charge more than his or her published rates for at least 30 calendar days after the last date on which the schedule of fees was published.

d. Incorrect. Although an enrolled agent may wait 45 days following the publication of a schedule of fees before increasing them, the required period is shorter.

2. Jason published fee information to his clients and prospective clients. What is the minimum period he must retain copies of the communicated fee information?

   a. Incorrect. Fee information may be communicated to clients and prospective clients in a variety of ways, provided such communication is not deceptive or otherwise in violation of IRS rules. To help in evaluating whether such communication violated IRS rules, an enrolled agent must retain copies of it for no less than a specified period; the period specified, however, is longer than 60 days.

   b. **Correct**. Enrolled agents are expected to retain copies of communicated fee information. The copies of such communications must be retained by the enrolled agent for a period of at least 36 months after the date of their last transmission or use.

   c. Incorrect. The required retention period applicable to published fee schedules in IRS regulations is not one year.

   d. Incorrect. Although an enrolled agent may choose to retain published fee information for a five-year period, such a lengthy retention period is not required under IRS regulations.

3. What must an enrolled agent do if he or she knows the client has intentionally omitted relevant information on a tax return?

   a. Incorrect. An enrolled agent cannot allow himself to be a party to the omission of relevant information on a tax return. Thus, doing nothing is not an option.

   b. Incorrect. To advise the client on how best to avoid detection would be to materially participate in the deception and would be unethical and illegal.

   c. Incorrect. Advising a client on the best means of minimizing penalties for engaging in an illegal act would jeopardize the reputation and legal position of an enrolled agent and is prohibited.

   d. **Correct**. If an enrolled agent knows that a client has failed to comply with the revenue laws or has made an error in or omission from a tax return, document, affidavit, or other paper which the client submitted or executed under the U.S. revenue laws the enrolled agent must advise the client of the failure to comply and the consequences of that failure.

4. Arthur, an enrolled agent, has a conflict of interest in his representation of a new client. In order to be able to represent the new client, Arthur has telephoned each client that would be affected by his representing the new client, and each has verbally waived the conflict of interest. How soon following their verbal waiver must Arthur obtain written confirmation from each of these affected clients?

   a. **Correct**. Irrespective of the general prohibition against an enrolled agent's representation of a client in the case of conflicting interests, an enrolled agent may represent the client where such representation represents a conflict of interest if: the enrolled agent reasonably believes that he or she will be able to provide competent and diligent representation to each affected client; the representation is not prohibited by law; and 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 enrolled agent. Such written confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days following it.

b. Incorrect. Obtaining written confirmation of a client's verbal consent must be accomplished within a reasonable period of time after the informed verbal consent is obtained from affected clients; however, obtaining written confirmation 60 days later would not normally be considered reasonable.

c. Incorrect. Written confirmation must be made within a reasonable period of time after the informed consent; 90 days, however, is too long a period.

d. Incorrect. Circular 230 clearly states that written confirmation must be obtained.

Chapter 3 Review Questions

1. A public reprimand of an enrolled agent by the Office of Professional Responsibility is referred to as a:

   a. **Correct**. Censure is a public reprimand of the practitioner and is generally a resolution condemning a person for misconduct. It constitutes an expression of strong disapproval and harsh criticism.

   b. Incorrect. Suspension requires cessation of activities for the period of suspension and is harsher than a public reprimand.

   c. Incorrect. Disbarment means the practitioner is prohibited from engaging in the practitioner's duties and is the harshest penalty that may be imposed.

   d. Incorrect. A monetary penalty is the imposing of a fine and is generally reserved for more serious offenses.

2. Which of the following is NOT considered to be disreputable conduct for which the Treasury Department may impose sanctions on an enrolled agent?

   a. Incorrect. Dishonesty *is* considered disreputable conduct for which the Treasury Department may impose sanctions on the practitioner.

   b. Incorrect. An enrolled agent's breach of trust *is* considered disreputable conduct for which the Treasury Department may impose sanctions on the practitioner.

   c. Incorrect. Conviction of a felony under federal or state law *is* considered disreputable conduct for which the Treasury Department may impose sanctions on the practitioner if the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

   d. **Correct**. Although an enrolled agent's violation of fee schedule rules may result in the imposition of sanctions, it is not considered to be disreputable conduct

3. Which of the following non-monetary sanctions does NOT affect an enrolled agent's eligibility to represent taxpayers before the IRS?

   a. Incorrect. An enrolled agent's disbarment permanently affects his or her ability to represent taxpayers before the IRS.

   b. Incorrect. Suspension affects an enrolled agent's ability to represent taxpayers before the IRS for the duration of the suspension.

   c. **Correct**. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS.

d. Incorrect. Not all non-monetary sanctions that may be imposed affect an enrolled agent's ability to represent taxpayers before the IRS.

4. What is the maximum monetary penalty that may be imposed on an enrolled agent by the Office of Professional Responsibility?

   a. Incorrect. No maximum dollar monetary penalty that may be imposed on an enrolled agent is specified.

   b. **Correct**. The amount of any penalty imposed on an enrolled agent will not exceed the gross income derived or to be derived from the practitioner's conduct giving rise to the penalty.

   c. Incorrect. The Office of Professional Responsibility reserves the right to impose sanctions for violations of its rules.

   d. Incorrect. Although no specific dollar maximum is specified, the rules do impose a maximum monetary penalty.

5. Which of the following would NOT necessarily be considered contemptuous conduct that is deemed disreputable under the regulations governing practice before the Internal Revenue Service?

   a. Incorrect. The term, "contemptuous conduct" covers a range of practitioner conduct that includes the use of abusive language in connection with practice before the IRS.

   b. Incorrect. An enrolled agent's making of false accusations in connection with practice before the IRS is contemptuous conduct if the practitioner knows the accusations to be false.

   c. Incorrect. Publishing libelous matter in connection with practice before the IRS is considered contemptuous conduct.

   d. **Correct**. A tax return preparer may not advise a client to submit a document, affidavit or other paper to the Internal Revenue Service 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.