ETHICS
AND
CIRCULAR 230

2009 UPDATE

By
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Carol has received many honors, including a **Lifetime Achievement Award** from the Mission Society of Enrolled Agents (MSEA) for her long-time contributions in educating the public about Enrolled Agents, and in educating Enrolled Agents. In August 2000, NAEA awarded Carol the first “**Excellence in Public Awareness Award**” for “Significant contributions in making ‘Enrolled Agent’ more readily recognized as the Tax Professional of choice.” She has also been honored with the **Excellence in Education Award** from the National Association of Enrolled Agents Education Foundation (NAEA-EF), and as the founding Chair of CSEA’s award winning Public Disaster Assistance Committee, was honored as "**Enrolled Agent of the Year**.”

Carol has extensive experience in TV, radio, and the print media. She appeared on Tax Talk Today in February 2002; in March 1999, **Ann Landers** featured her in a column that drew thousands of calls to the NAEA referral line; she appeared on ABC’s "**Good Morning America,**” and has been interviewed in print media that includes **Newsweek, Kiplinger’s, Family Money, Worth, Smart Money, Money Magazine, Forbes, Working Women, Bottom Line, Accounting Today, Modern Maturity,** and the **San Jose Mercury News.** In 1999, **Harcourt Brace** added a section by Ms. Thompson on “Domestic Partner Tax Law” to its **Financial Planning** CD for investment professionals. She is also a frequent contributor to professional journals.

Carol is a Graduate Fellow and served on the faculty of the National Tax Practice Institute (NTPI). She is the Second Vice-President of the Northern New England Society of Enrolled Agents. Previously, she served MSEA as its President, CSEA as its Second Vice-President, and has served NAEA, CSEA and MSEA on many committees, boards, and task forces.

Ms. Thompson received a Bachelor of Science degree with honors from the State University College at Brockport, NY. In addition, the department faculty voted her the top-graduating senior in her class Ms. Thompson has also been listed in "Who's Who in Executives and Professionals." She now lives in Southern Maine and watches the seasons change outside of her office windows.

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ETHICS AND CIRCULAR 230

INTRODUCTION

American Jobs Creation Act of 2004

The “Jobs Act 2004” amended Section 330(b) of title 31, United States Code (USC) (otherwise known as Circular 230) to expand sanctions against tax preparers, including monetary penalties based on conduct. Previously, the IRS only had the authority to sanction enrolled preparers (EA’s, CPA’s, attorneys, and Enrolled Actuaries) who practice before the IRS. Sanctions included censure, suspension, and disbarment. Those sanctions were expanded to include any prohibited conduct occurring after the enactment date of October 22, 2004.


On May 25, 2007, the Small Business and Work Opportunity Tax Act of 2007 amended provisions of the Internal Revenue Code (IRC) to make further changes to Circular 230 including:

- Extend the application of the tax return preparer penalties to all return preparers;
- Alter the standards of conduct that must be met to avoid imposition of the penalties for preparing a return that reflects an understatement of liability; and
- Increase applicable penalties under IRC §6694.

Under this Act, preparers would have been held to a standard of “more likely than not.” This raised hackles throughout the practitioner community.

The Emergency Economic Stabilization Act of 2008

The EESA reversed the Work Opportunity Act and erased “more likely than not” as if it never took effect for most preparer penalties. It did not reverse this standard for tax shelters and positions required to be disclosed.

REGULATION OF PRACTICE

On September 19, 2007, the IRS released the first set of new regulations pertaining to Circular 230. Unless otherwise listed, the new regulations are effective as of September 26, 2007. Some were amended in 2008, and final regulations were issued in late 2008. Amendments and clarifications are still being issued by the IRS.
Regulation of Practice:  Section 330 of title 31 of the United States Code (USC) authorizes the Secretary of the Treasury (“Secretary”) to regulate the practice of representatives (not “tax preparers” or “practitioners”) before the Treasury Department. Since the Civil War, the Treasury Department has acted as the primary licensing authority to oversee enrolled agents as representatives.

The Office of Professional Responsibility (OPR) is the delegate of the Secretary of the Treasury tasked with the oversight of representatives, including enrolled agents, CPA’s, attorneys, and with the new changes, un-enrolled preparers.

USC title 31, Section 330 gives the Secretary the authority to censure, suspend or disbar from practice representatives covered under Section 330.

- Representatives must receive notice and be given an opportunity to defend their position (this now includes all tax practitioners);
- The most common general reasons stated are incompetence, disreputable conduct, or violation of the regulations stated in Section 330 of title 31.

Under the new regulations, the Secretary may authorize the Director of the Office of Professional Responsibility to:

- Impose a monetary penalty against these individuals, and/or
- Seek an injunction under IRC §7408 (banning the practitioner from preparing returns for a fee).

CIRCULAR 230

Following are some of the new and modified sections of Circular 230 as of the new regulations. The new provisions tighten and narrow many of the sections regarding tax preparation and taxpayer representation.

The new law recognizes that unenrolled preparers should be held to the same standards as all practitioners for monetary penalties. However, the IRS still has no method to license, test, or require education for any unenrolled preparers.

Section 10.2(a)(4): Practice Before The Internal Revenue Service

Practice: Section 10.2(a)(4) amends the definition of “practice before the IRS” to include all matters connected with a presentation to the IRS that relate to a taxpayer’s rights, privileges, or liabilities under any laws or regulations administered by the IRS. This broadens the law to include tax preparation.
Definitions:

**Presentation:** Presentations include, but are not limited to:

- **Preparing** and **filing** documents;
- **Corresponding and communicating** with the Internal Revenue Service;
- **Rendering written advice** with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and
- **Representing** a client at conferences, hearings and meetings (including audits and appeals).

*(Jobs Act* amendment to *section 330* of *title 31.*)

**Tax Return:** A **tax return** includes an **amended tax return** and a **claim for refund.**

“**Tax Practitioner**” or “**Enrolled Practitioner**” includes any enrolled practitioners under §10.3 (EA, CPA, Attorney, Enrolled Actuary, and the newest designation: Enrolled Retirement Plan Agents, or ERPA).

“**Tax Preparer**” or “**Unenrolled Preparer**” is any preparer who is not enrolled.

“**OPR:**” Other changes to §10.2 include changing the name “**Director of Practice**” to “**Director of the Office of Professional Responsibility.**” (They simplified the name.)

**Practicing Before The IRS:** Practitioner groups sent written comments to the IRS arguing that providing tax advice is not, in and of itself, practicing “before the IRS.” The Treasury Department and the IRS determined that **any** written tax advice provided by a practitioner is **practicing before the IRS** and subject to *Circular 230.***

**Be Aware:** This includes email answers to client questions.

**Section 10.7: Representing Oneself; Participating In Rulemaking; Limited Practice; Special Appearances; and Return Preparation**

The bill before Congress limiting unenrolled return preparers did not pass; therefore, the new regulations do not address this issue.

As a result, the authorization in §10.7(c)(viii) is retained, which allows an individual, **who is not otherwise a “practitioner,”** to represent a taxpayer during an exam – if that individual prepared the return for the taxable period under examination.
The unenrolled preparer may negotiate with the IRS or bind the taxpayer to a position—but only during an exam of an open year prepared by that individual.

Unenrolled return preparers may not represent a taxpayer:

- Before any other office of the IRS, including Collection or Appeals;
- Execute closing agreements, claims for refund, or waivers; or
- Otherwise, represent taxpayers before the IRS unless specifically authorized by §10.7(c)(1)(l) through (vii).

Limited Practice – Sanctions: This section allows the Director of the OPR to stop an unenrolled preparer from preparing returns or representing taxpayers in audits if that preparer engages in conduct that would otherwise justify a sanction under §10.50.

TIGTA AUDIT OF UNENROLLED PREPARERS

On September 3, 2008, the Treasury Inspector General for Tax Administration office, or “TIGTA,” released a report of their review of tax returns prepared by unenrolled tax preparers. They went to 12 commercial chain and 16 small, independently owned tax offices and had 28 tax returns prepared. Their sample, while small, showed that 17 of the 28 returns were prepared incorrectly. Of the 17 that were incorrect, 6 contained misstatements and omissions considered to be willful or reckless. All of the preparers used commercial software to prepare the returns. None of the self-employment or employee business expense returns were correct.

The report went on to say that the IRS does not have one list or database that collects information on all preparers. In fact, the IRS does not know how many paid preparers exist and has no idea of the full extent of noncompliance and incompetence among practitioners. The lack of data hinders the IRS’ efforts to identify potentially problematic preparers and the tax returns they prepared.

TIGTA acknowledged that many unenrolled preparers have proper education and are competent preparers. However, the report recommends that the IRS have some form of national testing and licensing, with continuing education requirements to ensure that all tax preparers have at least some training before charging fees.

Six preparers acted “willfully or recklessly” during the preparation. They added or increased deductions without the auditors’ permission and in some cases, even after the auditor questioned whether he was entitled to the deductions. In one case, the auditor reported having children living in the home less than half the year. The preparer stated that he or she (no identification was given in the report) was going to show that the children lived in the home the full 12 months.
This resulted in a change from Single to Head of Household, increased the dependency exemptions, and qualified the auditor for the Child Tax Credit and Earned Income Credit. The net effect was an increase in refund from $100 to approximately $6,000.

The Acting Commissioner for Small Business/Self-Employed Division, responded by stating that SB/SE will “study the feasibility, effect, and potential benefits of implementing (an) identification number” for each paid tax preparer. It will be another year before that follow-up is due. This report is available at: www.tigta.gov.

Section 10.22: Diligence as to Accuracy

Section 10.22(b), Reliance on Others. Under this section, the work product of another person comes under the same due diligence as that for covered opinions under §10.34, 10.35 and 10.37. A practitioner will be presumed to have exercised due diligence when relying on the work product of another person if the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, and taking proper account of the nature of the relationship between the practitioner and the person.1

NOTE: This also affects the work product of your employees. Make sure your files show the due diligence done to verify the competency of the other person.

Section 10.27: Fees

IRS regulations do not allow a practitioner to charge an unconscionable fee in connection with any matter before the Internal Revenue Service. This is a facts and circumstances judgment. However, the new regulations tighten up rules for contingent fees. The new rules also tie in with undisclosed positions, where a practitioner charges a client what amounts to a contingency fee based on whether or not a shaky position will slide by the auditors.

The Treasury Department and the IRS believe that restricting contingency fees for preparing tax returns supports voluntary compliance with tax law by discouraging return positions that play the “audit lottery.”

Contingent Fees (§10.27(b)(2)): A practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service with the following exceptions:

1. A practitioner may charge a contingent fee if it is for an IRS examination of, or challenge to:
   a. An original tax return;

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1 The IRS announced in May 2009 that the OPR is currently focusing on writing guidance for Circular 230 Section 10.34 – particularly the work product of others under a practitioner’s supervision. The goal is to “synchronize the standards of Section 10.34 and section 6694, but that does not mean we will make them match exactly the same.” Matthew Cooper, IRS Office of Chief Counsel.
b. An amended return or claim for refund or credit where the amended return
or claim for refund or credit was filed within 120 days of a notice of an
exam or written challenge to the original return; or

c. A whistleblower claim under §7623(b).

2. A practitioner may charge a contingent fee for services rendered in connection
with a claim for credit or refund filed solely in connection with the determination
of statutory interest or penalties assessed by the Internal Revenue Service
(usually Form 843).

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

Definition: The regulations that define a Contingent Fee are the same as those for
covered opinions. Contingent Fees are defined as:

- A fee based on whether or not a position taken on a tax return (or other filing)
  avoids challenge by the IRS or is sustained either by the IRS or in litigation.
  (Playing the odds under the Audit Lottery.);

- A fee based on a percentage of the refund reported on the return. (The more I
  get you back, the more you pay me.);

- A fee based on a percentage of the taxes saved. (Amending returns for large
  refunds – also part of the Audit Lottery.);

- A fee based on a specific result to be attained. (Buy the amount of your
  refund.); or

- A fee arrangement in which the practitioner will reimburse the client for all or a
  portion of the client’s fee if the position taken on the return or other filing is
  challenged by the IRS or is not sustained. (If this trick doesn’t work, I’ll refund
  your fee. More of the Audit Lottery.)

A “matter before the IRS” includes:

- Tax planning and advice;

- Preparing, filing, or assisting in preparing or filing returns or claims for refund
  or credit;

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2 See Notice 2008-43, April 14, 2008. This Notice also clarifies that the “written notice” does not require
the IRS to furnish the written notice of an exam to a taxpayer as a prerequisite to a practitioner charging a
contingent fee.
All matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities administered by the IRS, including, but not limited to:

- Preparing and filing documents;
- Corresponding and communicating with the IRS;
- Rendering written advice with respect to any entity, transaction, plan or arrangement; and
- Representing a client at conferences, hearings, and meetings.

Section 10.29: Conflicting Interests

Practitioners are required to have written consent in order to represent taxpayers with conflicting interests, such as a divorce. The written consent must be in the hands of the practitioner within 30 days of verbal consent, and must be kept for at least 36 months from the date of the conclusion of the representation.

A conflict is present when:

1. The representation of one client will be directly adverse to another client (known as “Whipsaw” transactions); or

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

The practitioner may represent both clients under a conflict of interest if:

1. The practitioner must have a reasonable belief that he or she will be able to provide competent and diligent representation to each affected client.

2. The representation is not prohibited by law; and

3. Each affected client must waive the conflict of interest and sign a statement to that affect, and must return the statement within 30 days.

If a client does not return the written confirmation, the practitioner will not be subject to sanctions or monetary penalties if he or she can document in writing that a good faith effort was made to obtain the signature. However, the practitioner must withdraw from the representation of one or both of the clients if the written acceptance is not received.

Note: See sample letter in the Appendix.
NOTE: Sections 10.33, 10.35, 10.37 regarding “covered opinions” were not changed. The new rules add tougher sanctions for writing fraudulent or erroneous covered opinions.

Section 10.34: Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers

As part of the Small Business and Work Opportunity Tax Act of 2007, the IRC was amended to extend preparer penalties and standards of conduct to all tax return preparers under IRC §6694. Section 10.34 was revised and strengthened to help curtail frivolous arguments and unscrupulous tax practitioners. This was later amended by the Emergency Economic Stabilization Act to equalize the standards between preparers and self-filers.

The thresholds for preparer penalties begin with the Tax Reform Act of 1976, and have been on the rise ever since. The penalties are imposed on preparers if:

- There is an understated position on the return; and
- The understatement did not meet a threshold level of authorities as stated by the Internal Revenue Codes and Regulations.

Application of New Standards

- Undisclosed Positions (not shelters or reportable transactions): must use the “substantial authority,” which replaces “realistic possibility.”
- Disclosed Positions: “Reasonable basis” replaces “not frivolous.”
- Reasonable Cause Exception: There is no penalty if the preparer acted in good faith and the understatement was due to reasonable cause. This applies only for Tier 1 penalties under IRC §6694(a). There is no reasonable cause exception for Tier 2 penalties under IRC §6694(b).

  - Tier 1 Penalties: Understatement due to unreasonable positions taken by the tax preparer.
  - Tier 2 Penalties: Willful, reckless, or intentional disregard by the tax preparer.

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3 Please see Notices 2008-11, 12 and 13 for details. Watch for further guidance from IRS and OPR.
Below is a chart showing the thresholds from 1976 to the present.\(^4\)

<table>
<thead>
<tr>
<th>Threshold Standard</th>
<th>Authority Likelihood</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Frivolous</td>
<td>5%</td>
<td>Frivolous: patently improper on its face.</td>
</tr>
<tr>
<td>Reasonable Basis</td>
<td>20-25%</td>
<td>Not merely arguable. Must be reasonably based on one or more authorities per (\text{Regs. } $1.6662-4(d)(3)(iii))(^5)</td>
</tr>
<tr>
<td>Realistic Possibility of Success</td>
<td>33%</td>
<td>Position has a one-in-three possibility of being sustained on its merits. Best shown by court cases and rulings for and against.</td>
</tr>
<tr>
<td>Substantial Authority</td>
<td>40-45%</td>
<td>Shows that the weight of authorities supporting the position are greater than the weight of authorities opposed.</td>
</tr>
<tr>
<td>More Likely Than Not</td>
<td>Over 50%</td>
<td>The position would more likely than not be sustainable on its merits. More than half of the authorities support this position.</td>
</tr>
</tbody>
</table>

**Reasonable Basis**

A position is considered reasonable if it:

1. Is adequately disclosed;
2. Satisfies the authorities at \(\text{Regs. } \$1.6662-4(d)(3)(iii)\);  
3. The position is not *frivolous*;  
4. The position is not meant to delay or impede the administration of the Federal tax laws;  
5. The position may not omit information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a disclosure form with a good faith challenge to the law;  
6. The practitioner must inform a client of any **penalties** that are reasonably likely to apply to the client with respect to:  
   a. The practitioners advice to the client with respect to the position; or  
   b. The practitioner prepared or signed the tax return; and

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\(^4\) Spidell Publishing’s 2008 Federal Tax Update.  
c. Any document, affidavit, or other paper submitted to the Internal Revenue Service.

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

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

7. **Relying on information furnished by clients.** Practitioners generally may rely in good faith and without verification on information supplied by the client.

   *However,* practitioners must make further inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete. And yes, this includes auto and travel expenses…

**Section 10.50: Sanctions**

**Authority to Censure, Suspend, or Disbar.** The Secretary of the Treasury, or delegate, after notice and opportunity for a hearing, may censure, suspend, or disbar from practice before the IRS, any practitioner who is shown to:

1. Be incompetent or disreputable;
2. Fail to comply with any regulation under the prohibited conduct standards;
3. Have the intent to defraud; or
4. Willfully and knowingly misleads or threatens a client or prospective client.

**Authority to Impose Monetary Penalties.** The Secretary may impose:

1. **Monetary Penalties.** The Secretary of the Treasury, or delegate, after notice and opportunity for a hearing, may impose a monetary penalty on any practitioner who engages in conduct subject to sanction under §10.50.
2. **Employee.** If the practitioner is an employee, the firm or entity may also be penalized if the firm knew, or should have known about the conduct.
3. **Amount of Penalty.** The amount of the penalty cannot be more than the gross income derived, or to be derived, from the conduct that caused the penalty.
4. **Coordination with Other Sanctions:** The penalties may be imposed on a practitioner or an employer *in addition to* or *in lieu of* any suspension, disbarment, or censure.

5. **Facts and Circumstances:** Sanctions are based on facts and circumstances.

**Penalties Under IRC §6694.**

1. **Return Preparer Penalty:** IRC §6694 increases the penalty for an understatement of a tax liability from $250 to the *greater of* $1,000 or 50% of the income derived (or to be derived) by the preparer for the return or refund claim.

2. **Willful or Reckless Conduct.** Previously, this penalty was up to $1,000. Under the new laws, the penalty is now the *greater of* $5,000 or 50% of the income derived (or to be derived) by the tax preparer.

3. **IRC §6694 – Other Assessable Penalties.** Other negligent practices that may be subject to penalties include:
   
   a. Failure to furnish a copy of a return to taxpayer: $ 50
   b. Failure to sign return: $ 50
   c. Failure to furnish identifying number: $ 50
   d. Failure to retain copy or list of clients: $ 50
   e. Failure to file correct information returns: $ 50
   f. Negotiation of the client’s refund check: $500
   g. Failure to follow due diligence requirements for EIC $100

**Sanction Guide**

The IRS recently released a new *Guide to Sanctions* as an Exhibit to the *Internal Revenue Manual*. It has examples of tax preparer problems as well as a list of *aggravating* and *mitigating* factors to use in determining sanctions. Most of the examples have to do with tax preparers not filing necessary forms *on their own behalf*, such as Form 1040, or 941’s for employee taxes.⁶

**Section 10.51: Incompetence and Disreputable Conduct**

Incompetence and disreputable conduct for which a practitioner may be sanctioned include, but are not limited to:

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1. **Criminal Offense.** Conviction of any criminal offense under the Federal tax laws.

2. **Criminal Conviction.** Conviction of any criminal offense involving dishonesty or breach of trust.

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

4. **False Information.** Knowingly giving false or misleading information, or participating in any way in the giving of false or misleading information to any officer or employee of the Treasury Department in connection with any matter.

5. **Solicitation, Intent to Mislead, or Special Consideration.** Practitioners may not use false or misleading information with the intent to deceive a client or prospective client in order to be hired by that client. Nor may they claim to be able to obtain special consideration or action from the Internal Revenue Service or its employees. (See §10.30 for rules on solicitation.)

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

7. **Willful Violation.** 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 suggesting an illegal plan to evade Federal taxes or payment of taxes.

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

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

10. **Disbarment or Suspension.** Disbarment or suspension from practice as an attorney, certified public accountant, public accountant or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.
11. **Aiding and Abetting.** Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.

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

13. **False Opinion.** Giving a false opinion as described in paragraph §10.51(a)(13), knowingly, recklessly, or through gross incompetence, including an opinion, which is intentionally, or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws.

**False opinions include:**

a. A knowing misstatement of fact or law,

b. An assertion of a position known to be unwarranted under existing law,

c. Counseling or assisting in conduct known to be illegal or fraudulent,

d. Concealing matters required by law to be revealed, or

e. Consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading.

**Definitions:**

a. **Reckless conduct** is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances.

b. A **pattern of conduct** is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence.

c. **Gross incompetence** includes conduct that reflects gross indifference, preparation, which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

14. **Failure to Sign Returns.** Willfully failing to sign a tax return prepared by the practitioner when the Federal tax laws require the practitioner’s signature unless the failure is due to reasonable cause and not due to willful neglect.
15. **Willful Disclosure.** Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code. (See new Disclosure rules below.)

**Section 10.52 through 10.64: Procedures of Complaints (See Circular 230)**

**WHAT TO DO IF YOU GET A NOTICE OF COMPLAINT:**

The OPR office must send the practitioner a _notice of complaint_ with a clear and concise description of the facts and law of the complaint. _Sections 10.50 to 10.64_ outline the procedures of filing a complaint. If you get a complaint from OPR, you should immediately do the following:

1. Stop everything and call an attorney (**call an attorney**).
2. You have the same rights under an OPR complaint that you would under any other legal complaint:
   a. The right to representation (**call an attorney**);
   b. The right NOT to represent yourself (**call an attorney**);
   c. The right NOT to incriminate yourself (i.e. – **call an attorney** and shut up until you retain one – then shut up and do only what the attorney tells you to do);
   d. Do NOT do this alone (**call an attorney**).
3. Suspensions, disbarment, censures, and any other sanctions are _public information_. (**Call an attorney.**)

**Section 10.65: Supplemental Charges**

The Director of the OPR may request that the complaint be amended with supplemental charges against the practitioner if:

1. It appears that the practitioner denies a material allegation of fact falsely and in bad faith. (It’s clear that the behavior happened and the practitioner was served with the evidence, and still denies the allegations.)
2. The practitioner states that he or she has insufficient knowledge to defend the changes, when he or she clearly does have the information. (The evidence is clear, but the practitioner denies having the information.)
3. It appears that the practitioner knowingly introduced false testimony during the proceedings. (Liar, liar, pants on fire…)
**Sections 10.68, 10.71, and 10.72(a) through (c) — Discovery, Hearings, and Publicity of Proceedings; Section 10.73: Evidence**

Changes were made to these sections of *Circular 230* to amend and adjust the legal structure where necessary. They are interesting to read if you enjoy legal procedures, but will not affect most practitioners. Should you need to call an attorney, you may want to review them.

Please remember that a complaint from the OPR is much the same as a complaint in court. Rules of *discovery, motions, and evidence* are the same as in a regular courtroom. An Administrative Law Judge *is a judge* and you and any witnesses will be under oath, with a Court Reporter. *This is on the record.*

**Section 10.82: Expedited Suspension.** The new rules amend to whom *expedited suspension* applies. This includes any practitioner, who, *within five years of the date a complaint is lodged*:

1. Has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(a)(10).

2. Has been convicted of any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

3. Has violated conditions imposed on the practitioner under a decision rendered by an Administrative Law Judge due to a complaint lodged against the practitioner;

4. Has been sanctioned in a civil or criminal proceeding relating to any taxpayer’s liability (including that of the practitioner) for:
   a. Using delay tactics;
   b. Advancing frivolous or groundless arguments; or
   c. Failing to pursue available administrative remedies.

**Section 10.90 Records.** This section was amended to include the new categories of enrolled appraisers and enrolled retirement plan agents. The Director of the OPR must maintain and make available for public inspection the rosters of EA’s and ERPA’s, including those who are under sanctions.
DISCLOSURES: TREAS. REG. §301.7216-2 AND 3

New regulations governing IRC §7216, Disclosure or Use of Tax Information by Preparers of Returns, became effective on January 1, 2009. Disclosure regulations have not been updated since the 1970’s. Revenue Procedure 2008-35 outlines the new format to be used for consent forms:

1. **Separate Written Document.** There must be a separate written document for each type of disclosure. Reg. §301-7216-3(c)(1) allows for exceptions for multiple disclosures on a single consent form.

2. **Size of Form:** If the consent form is on paper, it must be 8½ by 11 inches or larger.

3. **Electronic Screen.** If it is sent electronically, it must be on a separate screen pertaining solely to the disclosure or use of tax return information.

4. **Requirements of Every Consent.** All consents to disclose or use tax return information must satisfy the following requirements:
   
   a. The consent must include mandatory language from the regulations.
   
   b. Identify the intended purpose of the disclosure or use.
   
   c. Include the name of the tax return preparer and the name of the taxpayer.
   
   d. Include the mandatory language referring the taxpayer to the Treasury Inspector General for Tax Administration (TIGTA) if he believes that his tax return information has been disclosed or used improperly.
   
   e. The consent must require the taxpayer’s affirmative consent to any use or disclosure. “Opt-out” consents are not allowed (where the taxpayer would have to remove or “deselect” disclosures or uses he or she does not wish to be made).
   
   f. The consent must be signed and dated by the taxpayer.
   
   g. The consent form must be complete. There can be no blank spaces.

5. **Multiple Disclosures.** The consent form may list more than one type of disclosure, as long as the taxpayer has the opportunity to select each of the various disclosures independently or all of them at one time. The mandatory statements required by the regulations need to be stated once.
6. Disclosure of the Entire Return. If the consent authorizes disclosure of a copy of the taxpayer’s entire tax return or all of the information in the return, the consent must allow the taxpayer to request a more limited disclosure.

7. Adequate Data Protection Safeguard. Separate consent must be granted to disclose the taxpayer’s social security number to a preparer outside of the United States.

There are 7 types of disclosures listed in Rev. Proc. 2008-35. The various disclosures cover types of service, on or off-shore preparation, with and without a social security number, auxiliary services (investments, etc.), and multiple uses.

What about holiday cards? You are ok if you send newsletters and holiday cards. BUT, you must do them in your office and use the U.S. Postal Service. If you use a third party mailing service (print, stuff and mail), you will need a consent form signed by the taxpayer.

Disclosure Language: To read and download examples of the 7 types of consent forms: www.irs.gov; Tax Professionals; Section 7216 Updated Rules for Tax Preparers; Aids to Preparing Section 7216 Consent Forms.

IRS UPDATES THE ‘DIRTY DOZEN’ FOR 2009

1. Phishing (#1 last year). Phishing is a way for Internet-based thieves to trick victims into revealing their personal information. Some of the scams look like requests from bank or credit institution, others look like the IRS sent the request. Remind your clients that the IRS never initiates unsolicited e-mail contact with taxpayers. If a client believes he or she has been the target of identity theft, have them go to the IRS website.

   Forward unsolicited IRS e-mails to: Phishing@irs.gov.

2. Hiding Income Offshore (up from #5 last year). The IRS and the tax agencies of U.S. states and possessions aggressively pursue taxpayers and promoters involved in abusive offshore transactions. Individuals continue to try to avoid or evade paying U.S. taxes by illegally hiding income in offshore bank and brokerage accounts or using offshore debit cards, credit cards, wire transfers, foreign trusts, employee leasing schemes, private annuities or life insurance plans. The IRS has also identified abusive offshore schemes involving use of electronic funds transfer and payment systems, offshore business merchant accounts and private banking relationships. (Think “UBS.”)

3. Filing False or Misleading Forms (New). Scam artists file false or misleading returns claiming refunds to which they are not entitled. Others file frivolous information returns, such as Form 1099-Original Issue Discount (OID), claiming false withholding credits used to “legitimatize” bogus refund claims.

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7 See IRS.gov for full details – keyword – “fraud” or “dirty dozen.”
4. **Abuse of Charitable Organizations and Deductions (up from #12).** The IRS continues to watch misuse of tax-exempt organizations. Misuse improperly shielding income or assets from taxation; attempts by donors to maintain control over donated assets or income from donated property; and overvaluation of contributed property. *In a case of bringing back an oldie, but a goodie, taxpayers are disguising private tuition payments as contributions to charitable or religious organizations.*

5. **Return Preparer Fraud (up from #9).** Dishonest tax return preparers make money by skimming a portion of their clients’ refunds and charging inflated fees for return preparation services; attracting new clients by promising large refunds; or promoting the filing of fraudulent claims for refunds on items such as fuel tax credits to recover taxes paid in prior years. Since 2002, the IRS has issued close to 400 injunctions that stop preparers from selling tax services to the public.

6. **Frivolous Arguments (down from #3).** Promoters of frivolous schemes encourage unsuspecting victims to make unreasonable and unfounded claims to avoid paying the taxes owed to the Treasury Department. The IRS recently expanded its list of frivolous legal positions on [www.irs.gov](http://www.irs.gov). Taxpayers who file a return, or any submission (such as an amended return) based on any of the positions on the IRS list are now subject to a $5,000 penalty.

7. **False Claims for Refund and Requests for Abatement (up from #8).** This scam involves a request for abatement of previously assessed tax using *Form 843, “Claim for Refund and Request for Abatement.”* This method is frequently used by non-filers. The tax they are trying to have abated has been assessed by the IRS through the *Substitute for Return Program.* The filer uses *Form 843* to list reasons for the request. Often, one of the reasons given is *"Failed to properly compute and/or calculate Section 83-Property Transferred in Connection with Performance of Service."*

8. **Abusive Retirement Plans (down from #6).** Advisers encourage taxpayers to shift appreciated assets into Roth IRAs or companies owned by their Roth IRAs *at less than fair market value.* In one variation of the scheme, a promoter has the taxpayer move a highly appreciated asset into a Roth IRA at cost value, which is below annual contribution limits even though the fair market value far exceeds the amount allowed. Other variations have included the use of limited liability companies to engage in activity which is considered prohibited.

9. **Disguised Corporate Ownership (up from #10).** Some people are going as far as forming domestic shell corporations in certain states for the purpose of disguising the ownership of a business or financial activity. Once formed, these anonymous entities can be used to facilitate underreporting of income, non-filing of tax returns, engaging in listed transactions, money laundering, financial crimes and even terrorist financing. The IRS is working with state authorities to identify these entities and to bring the owners of these entities into compliance.
10. **Zero Wages (down from #7).** In this scheme, taxpayers submit phony wage- or income-related information returns to replace the legitimate information filed by an employer. The phony information return negates the correct forms. Typically, a [Form 4852 (Substitute Form W-2)](https://www.irs.gov) or a “corrected” [Form 1099](https://www.irs.gov) is used as a way to improperly reduce taxable income to zero. Irwin Schiff, one of the biggest proponents of this scheme recently went to jail after numerous tries by the IRS.

The taxpayer also may submit a statement rebutting wages and taxes reported by a payer to the IRS. Some of the scam artists even include an explanation citing statutory language about the definition of wages on the [Form 4852](https://www.irs.gov). Another popular reference is to a paying company that refuses to issue corrected payroll forms for fear of retribution by the IRS.

11. **Misuse of Trusts (still at #11).** For years, unscrupulous promoters have urged taxpayers to transfer assets into trusts. They promise reduction of income subject to tax, deductions for personal expenses and reduced estate or gift taxes. These phony trusts rarely deliver the promised tax benefits. They are primarily used as a means to avoid income tax liability and to hide assets from creditors, including the IRS.

12. **Fuel Tax Credit Scams (still at #12).** The IRS is receiving unreasonable claims for the fuel tax credit. Taxpayers, such as farmers who use fuel for off-highway business purposes, may be eligible for the fuel tax credit. But some individuals are claiming the tax credit for nontaxable uses of fuel when their occupation or income level makes the claim unreasonable. Fraud involving the fuel tax credit was recently added to the list of frivolous tax claims, potentially subjecting those who improperly claim the credit to a $5,000 penalty. (Remember a year ago when 125 Jackson-Hewitt offices were closed for abusing this credit?)

**How to Report Suspected Tax Fraud Activity:** Suspected tax fraud can be reported to the IRS using IRS [Form 3949-A, Information Referral](https://www.irs.gov), and mailing it to [Internal Revenue Service, Fresno, CA 93888](https://www.irs.gov). The mailing should include specific information about who is being reported, the activity being reported, how the activity became known, when the alleged violation took place, the amount of money involved and any other information that might be helpful in an investigation. The name of the person who reports the activity is kept confidential.

**THE DUMMY AWARDS! BEST WORST PEOPLE OF THE YEAR!**

**Ophelia Kelley, Vidalia, GA.** Permanent injunction banning tax preparation for others. Ms. Kelley was repeatedly and intentionally engaged in fraudulent conduct. She claimed improper deductions and tax credits for her clients, including bogus fuel tax credits. She took fuel credits for truck drivers where, in most cases, the cost of the fuel purportedly purchased was greater than the taxpayer’s annual income. She also fabricated medical and charitable deductions, and failed to sign at least 100 tax returns.
Gayle Lemmon, Humboldt, IA. Permanent Injunction. Ms. Lemmon unlawfully understated tax liabilities by claiming improper deductions for home offices and non-deductible personal expenses. The government complaint also accuses her of fabricating charitable contributions and inflating unreimbursed employee business expenses. IRS examined 243 returns prepared by Ms. Lemmon. Of those, 224 had understated liabilities (92.1%). The complaint estimates the loss to the Treasury Department to be as much as $17 million over a 5 year period.

Harold Mette, Bradenton, FL. Permanent Injunction. Mr. Mette, or rather, Dr. Mette, has a Ph.D. degree and calls himself “The Tax Doctor.” Mette promoted a sham home-based business scheme. He created a bogus corporation for each customer and used it to claim fraudulent non-deductible personal expenses as tax deductible business expenses. He deducted customer’s personal utility bills, mortgage payments, car expenses, vacations, and children’s education expenses. He also deducted taxpayer’s personal medical expenses as “incentive” payments on the corporations.

4 CPA’s, 27 Tax Preparers and 1 Individual, Based in Florida. The United States filed suit to bar 32 individuals from promoting an alleged tax scam. This scam involved bogus income tax credits for sham sales of methane from landfills. The landfills were supposedly located in Puerto Rico, Illinois, New York, Ohio, and Connecticut. The defendants cooked documentation showing the alleged sales and sold the phony production facilities to thousands of customers in at least 14 states. They group claimed more than $30 million in methane production credits for their clients. Among the promoters were:

- Louis and Elizabeth Powell, in Carthage, TX, who sold the scheme to more than 1,800 customers, with more than $7.8 million of improper credits.

- Ronald Fontenot of Lake Charles, LA, is the president and CEO of Compro-Tax, Inc., with over 100 offices in the southeaster part of the United States. Fontenot promoted the credit scheme to all Compro-Tax store operators, and at least 54 operators sold interests in the scheme to customers.

- Sally Hand-Bostic, who operates National Express Tax in Carrollton, TX, is a representative for Drake Software. She allegedly promoted the investment to tax preparers who were her Drake Software customers, as well as her own tax clients, claiming nearly $2.5 million of improper tax credits.

Irwin Schiff Update – Permanently Barred. On Oct.17, 2008, a federal court in Las Vegas permanently barred notorious tax defiers Irwin Schiff and his former associate, Cynthia Neun, from promoting Schiff’s fraudulent “zero tax” plan. Both were convicted on tax charges in October 2005 and are still incarcerated. The permanent injunction bars Schiff and Neun from promoting their tax scam while in prison and after they are released.
In May 2007, the IRS released *Publication 4557, Safeguarding Taxpayer Data*. This publication is meant to help practitioners, and anyone else who handles client data, to determine and meet data privacy and security needs. The most current version is dated October 2008.

The first paragraph of the publication includes this statement:

“Safeguarding taxpayer data is a top priority for the IRS. It is the responsibility of government, businesses, organizations, and individuals that receive, maintain, share, transmit, or store taxpayers’ personal information. Taxpayer data is defined as any information that is obtained or used in the preparation of a tax return (e.g., income statements, notes taken in a meeting, or recorded conversations).”

*Publication 4557* is intended to help non-governmental businesses, organizations, and individuals that are paid to handle taxpayer data to understand and meet their responsibility to safeguard the information.

Safeguards are necessary to prevent fraud and identity theft, whether they are needed for one person or thousands. The publication contains lists of pro-forma security plans. The various laws and agencies involved in data protection and availability include:

1. **Federal Privacy and Security Laws.** The *Gramm-Leach-Bliley Financial Modernization Act of 1999*, or “GLB Act,” directed the FTC to establish the “Financial Privacy Rule” and the “Safeguards Rule.”

2. **Safeguards Rule:** This may be found at *16 CFR Part 314*, and requires financial institutions to insure the security and confidentiality of customer records and information. “Financial institutions” include:

   a. Professional tax preparers;

   b. Data processors;

   c. Affiliates; and

   d. Service providers who are paid for their services.

Security and confidentiality of records include:

a. Anticipated threats or hazards to the security or integrity; and

b. Unauthorized access to or use of records or information, which could be used to harm or inconvenience the client.
The **Safeguards Rule** requires that financial institutions – including tax preparation firms – develop, implement, and maintain an Information Security Program.

a. Must be written;

b. Must contain administrative, technical, and physical safeguards that are appropriate to the business’ size and complexity, nature, and scope of activities; and

c. Must be sensitive of the type of customer information handled.

The **Safeguards Rule** can be found at:

http://www.ftc.gov/privacy/privacyinitiatives/glbact.html

3. **Sarbanes-Oxley Act of 2002 (17 CFR Parts 232, 240, and 249):** This rule affects all **Securities and Exchange Commission (SEC)** reporting companies with a market capitalization in excess of $75 million. These companies must have an entire infrastructure to maintain the integrity of their business. For more information:


4. **FTC Privacy of Consumer Financial information Rule (“The Privacy Rule”) (16 CFR Part 313).** This rule requires financial institutions (as listed above) to give their clients privacy notices that explain the financial institution’s information collection and sharing practices. This agreement must allow customers the right to limit the sharing of some of their information. Other financial companies may be limited in their ability to use the information. This rule may be found at:

http://www.ftc.gov/privacy/privacyinitiatives/financial_rule.html

5. **Internal Revenue Code (IRC) Section 7206.** This section imposes criminal penalties on any persons engaged in the business of preparing or providing services in connection with the preparation of tax returns who knowingly or recklessly make unauthorized disclosures or uses of client information.

6. **Internal Revenue Code (IRC) Section 6713.** This provision imposes monetary penalties on unauthorized disclosures or uses of client information.
7. **Internal Revenue Procedure 2005-60.** This procedure *requires Authorized IRS e-file providers* to have security systems in place to prevent unauthorized access to taxpayer accounts and personal information by third parties. Violations of the GLB Act and the non-disclosure rules are listed in this procedure. For more information go to:


8. **State Laws:** Consult state laws and regulations governing privacy and security of financial data.

**HOW TO SAFEGUARD TAXPAYER DATA**

The FTC requirements for those who are paid to handle taxpayer data include:

1. Either take the responsibility or assign someone to be responsible for information security;

2. Assess the risks in your office. This includes:
   - a. Operations;
   - b. Physical environment;
   - c. Computer systems;
   - d. Employees;
   - e. Computers;
   - f. Filing cabinets; and
   - g. Bags and boxes taxpayers may leave with you.

3. Write a safeguard plan;

4. Be sure all of your service providers have proper FTC safeguards in place;

5. Constantly monitor, evaluate, and adjust your plan as your business changes;

6. If you aren’t sure about putting a plan in place, hire a security specialist to set one up for you; and

7. Determine the appropriate security controls for your business, including (but not limited to):
a. Locking doors to restrict access to paper or electronic files;

b. Require passwords for all computer files;

c. Encrypt taxpayer data;

d. Keep a backup of electronic data for recovery purposes; and

e. Shred paper containing any taxpayer information.

8. **Checklists.** *Publication 4557* contains a four-page checklist including:

   a. Administrative;

   b. Facilities;

   c. Personnel;

   d. Information systems;

   e. Computer systems;

   f. Media; and

   g. Certification of information systems.

**Personnel.** Policies for personnel are of the utmost importance. Seasonal hired staff must be told what is expected of them before, during, and after their employment. The business should:

1. Create and distribute *Rules of Behavior* that explains the responsibilities and expected behavior of anyone who uses the computers or handles taxpayer data.

2. When possible, do a background check and verify references for all applicants.

3. Employees should sign nondisclosure/confidentiality statements.

4. Change and/or terminate access to client information both on paper and computer when the employee leaves the business. If necessary, change the locks. Tax preparation firms with significant seasonal employees should change the locks each year.

5. Continue training all employees as needed on conduct and confidentiality.
Other Rules and Procedures: Check the publication for additional rules and procedures to secure your office and client information. There are excellent references to download lists and procedures that will bring your office into compliance.

REPORTING INCIDENTS

What do you do in case taxpayer information is compromised? This includes training employees to report any incident that may have affected the data to the person in charge of security immediately.

If there is a major breach of information, you may need to notify:

- Local law enforcement;
- FBI;
- Secret Service;
- U.S. Postal Inspection Service;
- Affected businesses; and
- Affected clients.

There is an FTC document available online that explains what to do in case of an incident.
INFORMED CONSENT LETTER

Conflict of interest "Informed Consent" Letter/Separate Representation

<Date>

<Client A Name>
<Client A Address>

Dear <Client A Name>:

Our firm is currently/will be rendering the following services to you: <description of CPA services>. During the course of rendering these services to you, our firm will also be rendering services to <Client B Name>. This letter will discuss certain ramifications of our firm's proposed concurrent representation of both you and <Client B Name>. You have the opportunity to have your own legal representative review and advise you on all matters related to the services, including this letter, prior to signing the acknowledgment that this letter contains.

Rendering services to both you and <Client B Name> at the same time presents a potential conflict of interest. The potential conflict of interest arises because your interests could become actually adverse to <Client B Name>'s interests in the future. Therefore, our firm must perform its services in a manner furthering both of your interests, cannot favor one party to the detriment of the other, and cannot negotiate on behalf of either party with the other party.

Based upon both parties' current cooperation and the preexisting relationship of the parties, we feel that our firm's concurrent representation of both parties presents no actual conflict of interest and that as accountants and advisors, our firm can adequately represent both parties' interests.

Should an actual conflict of interest arise in the future, our firm will promptly apprise you of any such actual conflict so that you and <Client B Name> can jointly decide how to resolve the conflict and/or whether you wish to obtain separate representation. Further, if you become aware of an actual conflict of interest, you agree to inform our firm of that actual conflict immediately.

By signing below, you acknowledge that (1) the potential conflict of interest has been fully disclosed to you; (2) you understand and acknowledge the potential conflict of interest as described; and (3) you consent to the concurrent representation subject to the potential conflict of interest as disclosed.

_____________________________
<Accountant Name><Firm Name>
Approved:

______________________________
<Client A Name> <Date>

8 This exhibit is courtesy of CAMICO, the nation's largest CPA-owned mutual insurance company and second largest provider for accountants' professional liability insurance and risk management services. www.CAMICO.com. Provided by Bob McKenzie, Esq.
TYPES OF AUTHORITY

1.6662-4(d)(3)(iii): Except in cases described in paragraph (d)(3)(iv) of this section concerning written determinations, only the following are authority for purposes of determining whether there is substantial authority for the tax treatment of an item:

1. Applicable provisions of the Internal Revenue Code and other statutory provisions;

2. Proposed, temporary and final regulations construing such statutes;

3. Revenue rulings and revenue procedures;

4. Tax treaties and regulations thereunder, and

5. Treasury Department and other official explanations of such treaties;

6. Court cases;

7. Congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill’s managers;

8. General Explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book);

9. Private letter rulings and technical advice memoranda issued after October 31, 1976; actions on decisions and general counsel memoranda issued after March 12, 1981 (as well as general counsel memoranda published in pre-1955 volumes of the Cumulative Bulletin);

10. Internal Revenue Service information or press releases; and


12. Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by tax professionals are not authority. The authorities underlying such expressions of opinion where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an item.

Notwithstanding the preceding list of authorities, an authority does not continue to be an authority to the extent it is overruled or modified, implicitly or explicitly, by a body with the power to overrule or modify the earlier authority. In the case of court decisions, for example, a district court opinion on an issue is not an authority if overruled or reversed by the United States Court of Appeals for such district.
However, a Tax Court opinion is not considered to be overruled or modified by a court of appeals to which a taxpayer does not have a right of appeal, unless the Tax Court adopts the holding of the court of appeals.

Similarly, a private letter ruling is not authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin.  

CIRCULAR 230

Get a Copy: To download Circular 230, go to www.irs.gov/taxpros, and then click on “Circular 230.”

OTHER LIGHT READING


Final Regulations – Effective December 22, 2008. (Document 4830-01-p.) 210 pages. This is the full text of regulations explaining all of the new rules for tax preparation, including the comments of those who wrote to the IRS regarding the new law. This includes most of the new sections to Circular 230, and includes the new rules for IRC §6694. This is an interesting read if you want to know the process for new regulations. Each section explains what commentators requested and why the Treasury Department and IRS will or will not include those comments in the rules.

For example, one commentator noted that the use of estimates is sometimes necessary when calculating income taxes. The Department of the Treasury and IRS recognize that there are circumstances when an estimate must be used, such as when taxpayer’s records are destroyed accidentally. But, both conclude that a general rules regarding the use of estimates in the preparer penalty regulations could impact other substantive tax provisions.

This document is available on the IRS website, or though most research vendors.

Thank you for your wonderful support.
It has been my privilege to be here with you.

Carol W. Thompson, EA

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9 IRC Regs: 1.6662-4(d)(3)(iii)