Tax Return Preparer Ethical Issues

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Introduction to Course

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 for the knowledgeable assistance of attorneys, CPAs, enrolled agents and other qualified tax return preparers.

To help ensure such professionals understand their ethical responsibilities in representing their clients before the IRS and in preparing their tax returns, the IRS has published Treasury Department Circular No. 230. Circular 230 offers substantial guidance by:

- Setting forth rules relating to the authority to practice before the IRS;
- Identifying the duties and restrictions relating to practice before the IRS; and
- Prescribing sanctions for violating the regulations.

This course will examine many of those rules, duties and restrictions as well as the sanctions imposed for their violation. In that examination of applicable rules, the course will discuss the requirements imposed on tax return preparers by them and will then present real-world scenarios focusing on specific ethical issues preparers may encounter in their professional activities. The preparer will be asked to analyze the scenario, identify the ethical issue or issues presented and determine an appropriate response.

Learning Objectives

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

- Recognize the permitted scope of tax return preparer responsibilities;
- Identify the best practices for tax advisers in preparing or assisting in the preparation of a submission to the Internal Revenue Service;
- List practitioner duties and restrictions with respect to –
    - Information to be furnished to the IRS,
    - The practice of law,
    - Dealing with taxpayer omissions, errors and noncompliance with U.S. revenue laws,
    - The requirement for preparer diligence as to accuracy,
    - Return of client records,
    - The existence of conflicts of interest, and
    - Solicitation of business; and
- List the various sanctions that may be imposed for a preparer's failure to comply with applicable conduct rules.

Chapter 1 – Tax Return Preparer Responsibilities

Introduction

The Internal Revenue Service authorizes certain professionals to practice before it. Such professionals include attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents and other qualified tax return preparers. Within each category, the IRS further delineates the permitted scope of responsibilities.

In this chapter we will look at the scope of tax return preparer responsibilities. In so doing, we will discuss the practices identified as **best practices** by the IRS that tax preparers should follow in carrying out their professional activities and the standards set out by the IRS with respect to tax returns and other documents submitted to it.

Chapter Learning Objectives

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

- Recognize the scope of permitted tax return preparer responsibilities;
- Identify the best practices for tax advisers in preparing or assisting in the preparation of a submission to the Internal Revenue Service with respect to:
  - Client communication,
  - Establishing relevant facts,
  - Providing client advice, and
  - Practice before the IRS;
- Recognize the standards related to tax return and document preparation; and
- Identify the applicable standards for advising clients concerning potential penalties.

Tax Return Preparer Scope of Responsibilities

A CPA, attorney, enrolled agent or tax return preparer may practice before the Internal Revenue Service, provided he or she is not currently under suspension or disbarment from practice. While a CPA, attorney or enrolled agent has unlimited client representation rights before the IRS, the activities permitted of a tax return preparer without such credentials—an unenrolled preparer, in other words—is limited.

The allowable professional activities of unenrolled tax return preparers are not limited solely to the preparation of documents. Instead, an unenrolled tax return preparer who participates in the IRS annual filing season program (AFSP) may also represent taxpayers before the IRS during an examination if the preparer signed the tax return or claim for refund for the taxable year or time period under examination. Beginning in 2016, only annual filing season program participants and enrolled preparers may represent clients; unenrolled tax return preparers who do not participate in the annual filing season program are authorized only to prepare tax returns.

Preparation of Documents

With respect to the preparation of documents, an unenrolled tax return preparer must limit his or her activities to preparing and signing:

- Tax returns;
- Claims for refund; and
- Other documents for submission to the Internal Revenue Service.

Such a preparer may prepare all or substantially all of a tax return or claim for refund of tax.

Taxpayer Representation

If an unenrolled tax return preparer who participates in the AFSP signed a client's tax return or claim for refund for the taxable year or time period under examination and at the time of representation, he or she may represent the taxpayer before any of the following IRS personnel:

- Revenue agents;
- Customer service representatives; or
- Similar officers and employees of the Internal Revenue Service.

Although a tax return preparer who participates in the AFSP may represent a taxpayer before the foregoing officers and employees of the IRS under the circumstances specified, such right does not permit the preparer to represent the taxpayer—regardless of the circumstances requiring representation—before other IRS personnel.

Accordingly, unenrolled tax return preparers—regardless of their participation in the AFSP—may *not* represent taxpayers before:

- Appeals officers;
- Revenue officers;
- Counsel; or
- Similar officers or employees of the Internal Revenue Service or Treasury Department.

Best Tax Return Preparer Practices

Tax advisers are expected to provide clients with the highest quality representation concerning federal tax issues. In order to help ensure clients receive the highest quality representation, Treasury Department Circular No. 230 identifies certain best practices to which tax professionals are expected to adhere in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service.

IRS-identified best practices relate to the professionals':

- Communication with clients;
- Establishing relevant facts;
- Providing client advice; and
- Practice before the Internal Revenue Service.

Let's briefly consider each of these best practices.

Client Communication

Advisers must communicate clearly with the client and delineate specifically what the client should expect in connection with the tax return preparer's professional activities. Thus, an adviser should determine the client's expected purpose for and use of any advice provided by the professional.

The professional should also possess a clear understanding with the client regarding the form and scope of any professional service to be rendered. In short, the tax return preparer should understand what the client expects and indicate clearly what the professional will deliver.

Establishing Relevant Facts

When a tax return preparer provides professional services for a client, the adviser must bring his or her evaluative skills to bear on the client's situation. The best practices suggest a step-by-step approach to arriving at appropriate conclusions regarding the various facts a client may present to an adviser.

Pursuant to best practices, the preparer should:

- Establish the facts;
- Determine which facts are relevant;
- Evaluate the reasonableness of any assumptions or representations;
- Relate the applicable law to the relevant facts; and
- Arrive at a conclusion supported by the law and the facts.

Providing Client Advice

The IRS-provided best practices include the need for tax professionals to advise clients regarding the import of the conclusions reached by the professional. For example, such import may include whether a taxpayer could avoid accuracy-related penalties under the Internal Revenue Code if the taxpayer acts in reliance upon the advice.

Practice Before the Internal Revenue Service

All tax professionals are expected to act fairly and with integrity in practice before the Internal Revenue Service. While any preparer may have a perfectly accurate understanding of the requirements of fairness and integrity, a brief review of their meaning may help to bring those qualities into greater focus.

Integrity requires consistent honesty and candor which must not be subordinated to personal gain or advantage. Tax professionals enjoy a position of trust with respect to their practice before the Internal Revenue Service, and the fundamental source of that trust is the adviser's professional integrity. Although allowance can be made for innocent error and legitimate differences of opinion, integrity is antithetical to deceit and subordination of a professional's principles.

Fairness requires impartiality, intellectual honesty and disclosure of material conflicts of interest. It involves a subordination of one's own feelings, prejudices and desires so as to achieve a proper balance of conflicting interests. Fairness is treating others in the same fashion that you would want to be treated.

Standards Related to Work Product and Other Papers

Although a tax return preparer is expected to exercise reasonable and appropriate judgment with respect to his or her professional activities, it is also critical that the preparer comply with certain standards. Such standards relate to:

- Tax returns;
- Documents, affidavits and other papers; and
- Advising clients on potential penalties.

Let's briefly consider those standards.

Tax Return Standards

The standards contained in Circular No. 230 relating to the preparation of tax returns and claims for refund prohibit certain actions by a practitioner. Pursuant to those standards, a practitioner is prohibited from willfully, recklessly or through gross incompetence:

- ***Signing a tax return or claim for refund*** that the practitioner knows or reasonably should know contains a position that –
    - Lacks a reasonable basis,
    - Is an unreasonable position as described in the Internal Revenue Code[1] and other published guidance, or
    - Is a willful attempt by the practitioner to understate the liability for tax or is a reckless or intentional disregard of rules or regulations by the practitioner as described in the Internal Revenue Code[2] and other published guidance; or

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[1] IRC §6694(a) states in part that understatements are deemed to be due to unrealistic positions if:

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

(2) any person who is an income tax return preparer with respect to such return or claim knew (or reasonably should have known) of such position

[2] IRC §6694(b) states with respect to willful or reckless conduct that, if any part of any understatement of liability with respect to any return or claim for refund is due -

- ***Advising the client to take a position*** on a tax return or claim for refund, or preparing a portion of the tax return or claim for refund containing a position that –
    - Lacks reasonable basis,
    - Is an unreasonable position as described in the Internal Revenue Code and other published guidance, or
    - Is a willful attempt by the practitioner to understate the liability for tax or is a reckless or intentional disregard of rules or regulations by the practitioner as described in the Internal Revenue Code and other published guidance.

Pattern of Conduct a Factor in Determining Nature of Practitioner Actions

When tax returns or claims for refund are received by the Internal Revenue Service and found to contain positions that lack a reasonable basis, are unreasonable as described in the Code or constitute an attempt by the practitioner to understate the liability for tax, the question arises as to whether the practitioner's failure to meet the standards required by the IRS should be considered willful, reckless, or the result of gross incompetence. According to published IRS guidance, the practitioner's ***pattern*** of conduct is a factor that will be taken into account in making that determination.

In somewhat simpler language, repeated violations of the standards for tax return preparation by a practitioner are likely to suggest that the practitioner's failure to meet the required tax return standards is due to the practitioner's willful or reckless conduct or is the result of his or her gross incompetence.

Standards Related to Documents, Affidavits and Other Papers

Treasury Department Circular No. 230 similarly provides standards with respect to documents, affidavits and other papers. Those standards address advice a practitioner provides to a client with respect to a position taken or a document submitted.

Pursuant to the standards provided by the Internal Revenue Service, a practitioner is prohibited from advising a client to:

- Take the position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous[3]; or
- Submit a document, affidavit or other paper to the Internal Revenue Service –
    - The purpose of which is to delay or impede the administration of the federal tax laws,
    - That is frivolous, or
    - 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.

In other words, a practitioner will have violated the standards related to the submission of documents, affidavits and other papers to the IRS if he or she has advised a client to take a position in such a document that is not serious. Furthermore, a practitioner who has advised a client to submit a document designed solely to obstruct IRS administration of the tax laws will have violated IRS standards.

While advising a client to submit a document that intentionally disregards an existing rule or regulation would ordinarily be a violation of IRS standards, doing so would not be a violation if the

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

(2) to any reckless or intentional disregard of rules or regulations by any such person, such person shall pay a penalty of $1,000 with respect to such return or claim. With respect to any return or claim, the amount of the penalty payable by any person by reason of this subsection shall be reduced by the amount of the penalty paid by such person by reason of subsection (a).

[3] "Frivolous" is generally defined to mean a thing of little value or importance that is not properly serious or sensible.

practitioner also advised the client to submit a document in good faith that provides reasonable grounds for a challenge to the existing rule or regulation.

Standards for Advising Clients on Potential Penalties

Treasury Department Circular No. 230 also provides standards with respect to practitioners advising clients as to the potential penalties that may apply with respect to positions taken on tax returns and documents submitted to the Internal Revenue Service. Such standards require that a practitioner inform a client of possible penalties. The requirement to inform a client of such penalties to which he or she may be subject applies even if the practitioner is not subject to the penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper that was submitted.

Accordingly, a practitioner is required to inform a client of any penalties that are reasonably likely to apply to the client with respect to:

- A position taken on a tax return if the practitioner–
    - Advised the client with respect to the position, or
    - Prepared or signed the tax return; and
- Any document, affidavit or other paper submitted to the Internal Revenue Service.

In addition, practitioners are also required to advise clients of any opportunity to avoid penalties that are likely to apply, if relevant, and of the requirements applicable to the client to make adequate disclosure.

Summary

Although an unenrolled tax return preparer is authorized to prepare all or substantially all of a tax return or claim for refund of tax, he or she is required to limit professional activities to preparing and signing tax returns, claims for refund and other documents to be submitted to the Internal Revenue Service. In addition, an unenrolled tax return preparer who participates in the AFSP and who signed a client's tax return or claim for refund for the taxable year or time period under examination may represent the taxpayer before IRS revenue agents, customer service representatives and similar officers and employees of the Internal Revenue Service, provided the preparer also participates in the AFSP at the time of representation. Such tax return preparers may not represent taxpayers before appeals officers, revenue officers, counsel or similar IRS or Treasury Department officers or employees. Beginning in 2016, an unenrolled tax return preparer who does not participate in the AFSP will possess no client representation rights.

The best practices identified in Treasury Department Circular No. 230 require that advisers provide their clients with the highest possible representation. Meeting such standards requires that advisers communicate clearly with their clients concerning client expectations and identify in detail the services the tax return preparer will provide. With respect to a client's tax return and associated documents, the preparer must establish the facts, determine which facts are relevant, evaluate the reasonableness of any assumptions or representations, relate the applicable law to the relevant facts, and arrive at a conclusion supported by the law and the facts. Tax professionals must also advise clients as to the import of the conclusions reached by the professional. At all times, a tax professional is expected to act fairly and with integrity in his or her practice before the Internal Revenue Service

Treasury Department Circular No. 230 also provides standards relative to tax preparers' professional services in connection with clients' tax returns, documents, affidavits and other papers submitted to the Internal Revenue Service. In addition, such standards require that tax return preparers advise their clients as to potential penalties.

Review Quiz

1. Before which of the following IRS employees may an unenrolled tax return preparer who participates in the AFSP represent a taxpayer?

    A. Revenue agents

    B. Appeals officers

C. Revenue officers

D. Counsel

2. An unenrolled tax return preparer may engage in all of the following professional activities EXCEPT:

A. Preparing documents for submission to the IRS

B. Preparing and signing federal tax returns

C. Representing taxpayers as to the qualification of their employee plans

D. Preparing and signing claims for tax refunds

3. Which of the following is a factor the IRS may consider in concluding a tax return preparer's violation of tax return preparation standards was willful or the result of the preparer's reckless conduct?

A. Taxpayer comments

B. Repeated violations

C. Frequent previous job changes

D. Low preparer competency test scores

4. Under what circumstances may a practitioner advise a client to submit a document to the Internal Revenue Service that demonstrates an intentional disregard of a regulation?

A. Never

B. When the submission will be accompanied by a document evidencing a good-faith challenge to the regulation

C. When doing so will tend to reduce the taxpayer's liability

D. When the practitioner believes the result of application of the regulation will be inequitable

5. Helen prepared the client's tax return but did not advise her client to take a particular position that he chose to take potentially involving penalties for which he may be liable. Which of the following statements is correct with respect to her decision not to advise her client concerning possible penalties?

A. Because she did not advise the client concerning the position she is not required to inform him of the penalties that are likely to be imposed

B. A tax return preparer must advise a client about possible penalties only if the position could result in the imposition of criminal charges

C. No advice with respect to possible penalties need be given by a tax return preparer

D. Helen must advise the client about possible penalties because she prepared his tax return

Chapter 2 – Practitioner Duties and Restrictions

Introduction

Treasury Department Circular No. 230 prescribes certain duties and restrictions that relate to a tax return preparer's practice before the Internal Revenue Service, whether or not the preparer is enrolled. In large measure, these prescribed duties and restrictions apply the general code of conduct principles discussed in Chapter 1 to specific issues a tax return preparer may encounter in his or her professional activities. This chapter will examine certain of those duties and restrictions.

Chapter Learning Objectives

Upon completion of this chapter, you should be able to recognize practitioner duties and restrictions with respect to:

- Information to be furnished to the IRS,
- The practice of law,
- Dealing with taxpayer omissions, errors and noncompliance with U.S. revenue laws,
- The requirement for preparer diligence as to accuracy,
- Return of client records,
- The existence of conflicts of interest, and
- Solicitation of business.

Tax Return Preparer Duties and Restrictions

The Internal Revenue Service imposes certain duties on a tax return preparer's practice before the IRS and applies restrictions to his or her professional activities. Among such prescribed duties and restrictions are those related to:

- Negotiation of client refund checks;
- Solicitation of business;
- Unauthorized practice of law;
- Required response to IRS requests for information;
- Knowledge of client omissions;
- Requirement for practitioner accuracy;
- Practitioners' return of client records; and
- Conflicting interests.

Let's turn our attention to an examination of them now.

Prohibition on Negotiation of Client Refund Checks

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 $545 with respect to each such check. The final regulations issued by the IRS governing Circular 230 that are 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 practitioner or any firm or other entity with whom the practitioner is associated."

Solicitation of Business

Treasury Department Circular No. 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

Practitioners—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—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 a practitioner deceptively holding himself or herself out as possessing skills, credentials or experience not actually possessed, the Internal Revenue Service specifies how such practitioners may describe themselves and their relationship to the IRS. Although an unenrolled tax return preparer may not use the term "certified" or imply that he or she is an employee of the Internal Revenue Service, an unenrolled tax return preparer who participates in the AFSP may state that he or she "***holds a valid Annual Filing Season Program Record of Completion for the calendar year and has complied with the IRS requirements for receiving the Record of Completion***."

Any oral or written direct or indirect solicitation of employment in connection with matters related to the Internal Revenue Service by a practitioner is prohibited if the solicitation violates federal or state laws or if such solicitation violates any other rule applicable to the practitioner. Any such solicitation that is not prohibited by law or applicable rule must:

- Clearly identify the solicitation as a solicitation of employment; and
- Identify the source of the information, if applicable, used by the practitioner in choosing the recipient of the solicitation.

Professional Fee Information

A practitioner is permitted to state in any advertising or solicitation that clients and potential clients may obtain a written schedule of fees. Accordingly, practitioners may publish the following information with respect to fees:

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

A practitioner is not permitted to 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, practitioners may be employed with respect to matters in which costs are expected to be incurred. In such cases, any statement of the information related to matters in which costs may be incurred must also disclose whether the clients will be responsible for payment of such costs.

Communication of Fee Information

Practitioners have a wide range of acceptable methods of communicating the information. Such information may be communicated through:

- Professional lists;
- Telephone directories;
- Print media;
- Mailings;
- E-mail;

- Facsimile;
- Hand-delivered fliers;
- Radio;
- Television; or
- Any other method.

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

Practitioners are expected to retain copies of communicated fee information. The copies of such communications must be retained by the practitioner for a period of at least 36 months after the date of their last transmission or use.

The type of copy that must be retained varies, depending on the type of communication. If the communication is contained in a radio or television broadcast, such broadcast must be recorded, and the practitioner must retain a recording of the actual transmission. If the communication is contained in direct mail or e-mail, the practitioner must retain a copy of the actual communication along with a list or other description of persons to whom the communication was mailed or otherwise distributed.

Improper Associations

A practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section. Thus a tax return preparer is prohibited from employment in a firm whose practices violate Treasury Department Circular No. 230 rules relative to solicitation. Similarly, a firm is prohibited from employing a tax return preparer who violates such rules.

Solicitation Case Study

Now that we have looked at the rules concerning the solicitation of business, you will have the opportunity to evaluate the solicitation activities of Bob Archibald, a tax return preparer. Review the hypothetical information. When you have reviewed it, identify the violations of Treasury Department Circular No. 230's rules governing solicitation and determine what he should have done instead. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Bob Archibald's Solicitation Activities

Bob Archibald began preparing tax returns a couple years ago. He regularly publishes a list of his fees and blankets the local area with flyers advertising that, for uncomplicated tax returns, his fees are the lowest around. A footnote at the bottom of the flyer states that additional fees may apply in certain situations. His flyer also guarantees clients a refund.

Two weeks after publishing his fees, he was approached by the president of a local association who offered to direct his 250 association members to Bob's tax service in return for a commission. Bob agreed to the arrangement and immediately increased his fees by 15% to cover the additional cost of paying the commission.

The following day, Bob began to prepare the tax return for a member of the association. Since the taxpayer qualified for the earned income tax credit, Bob charged the taxpayer an additional $50 for completing the necessary forms.

Click here to compare your answer

Unauthorized Practice of Law

The business of preparing tax returns requires that practitioners possess a sufficient understanding of federal tax law. Despite that requirement, however, practitioners who are not members of the bar are not authorized to practice law. A practitioner who engages in the unauthorized practice of law is in violation of IRS rules and state law.

In light of the prohibition against the unauthorized practice of law and the sanctions for doing so, it is reasonable to ask just what constitutes the "unauthorized practice of law." Unfortunately, the answer is less than entirely clear. Regulating the practice of law is a function of the individual states, and their definitions of just what constitutes its unauthorized practice vary.

While some activities performed by a non-lawyer, such as representing another person in matters being litigated, are prohibited as the unauthorized practice of law, other activities—drafting documents and providing legal advice, for example—are also generally considered to cross the line into the unauthorized practice of law. In at least one state, a crime is deemed to have been committed if a person creates a false impression that he or she is a lawyer.

Certain activities are universally regarded as the practice of law. These activities, such as drafting legal documents, are to be an engaged in only by lawyers. The more practical issue for tax return preparers relates to when the discussion of taxes with a client becomes "legal advice" and, therefore, becomes the exclusive province of the legal profession.

Even though no universal answer can be given to the question of when such a discussion crosses the line and becomes the unauthorized practice of law, some generally-recognized guidance exists. That guidance includes the following:

- If the advice given to a client is provided in general informational terms, such advice would not normally be deemed the unauthorized practice of law. For example, explaining the general principles of a technique that would enable the client to defer the need to recognize income until a later year would not generally be considered the unauthorized practice of law; or
- Engaging in a discussion specifically about the client's situation would not ordinarily constitute the unauthorized practice of law, provided the matter being discussed is settled in the law and is a matter of common knowledge among tax preparers.

Unauthorized Practice of Law Case Study

Having looked at the rules related to the unauthorized practice of law and the general principles applicable to such activity, let's again evaluate a tax return preparer's activities. As in the previous case study, you should evaluate the preparer's actions. When you have evaluated them, identify what the preparer did incorrectly and determine what she should have done instead. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Shirley Connor's Advice

Shirley Connor has a thriving tax preparation service and is convinced her success is due to providing certain value-added services. Having spent a year in law school, Shirley augments her tax practice by offering advice to her clients about legal issues with which she is very familiar and occasionally drafting documents based on samples included in her law books.

While completing her widowed client Barbara's tax return, she noticed that Barbara received a substantial amount of unearned income each year that she regularly gifted to her four children. While giving Barbara her completed tax returns, Shirley suggested to Barbara that she consider gifting the assets to an irrevocable trust and designating her four children as trust beneficiaries. In that way, Shirley explained, Barbara would not be required to recognize the income from the assets each year; instead, the income from the assets and the tax liability would flow through to Barbara's children. Since her law books contained a sample irrevocable trust, Shirley offered to draft the trust for Barbara and save her the cost of engaging an attorney.

Click here to compare your answer

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 a practitioner receives an IRS request for records or information, the practitioner must promptly submit the requested material. The only time such a request may be denied, assuming the requested records or information are in the practitioner's possession, is when the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

Good Faith

Good faith refers to an absence of malice or any intention to deceive. It is characterized by good intentions and sincerity.

Requested Material not in Practitioner's Possession

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

- Promptly notify the requesting Internal Revenue Service officer or employee;
- Provide to the requester any information the practitioner has with respect to the identity of any person who the practitioner believes may have possession or control of the requested records or information; and
- Make reasonable inquiry of the client about whose records or information are being requested concerning the identity of any person who may have possession or control of the requested records or information.

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

Material Requested Concerning Alleged Practitioner Violation

Alleged practitioner violations of Internal Revenue Service rules are investigated. When a duly authorized officer or employee of the Internal Revenue Service makes a request of a practitioner concerning an inquiry into an alleged violation of the regulations, the practitioner 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 practitioner 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 a practitioner 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 practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

Request for Information Case Study

What should you do when you have received a request for information from the Internal Revenue Service? Consider Bill Whitacre's actions in the hypothetical scenario below. Evaluate his actions, identify what he did incorrectly and determine what he should have done instead. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Bill Whitacre and the IRS Request

Bill Whitacre is a tax return preparer who received a request from the IRS for certain records substantiating deductions taken on his client's tax return for the year before Bill began preparing the client's tax return. Bill doesn't have the requested records and believes the IRS has made a mistake by directing their request to him instead of to the client or his former tax return preparer. Based on those factors, he decided to ignore the request.

Click here to compare your answer

Knowledge of Client Omissions

What if the information provided to a practitioner is inaccurate? How should the practitioner respond? A practitioner 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 No. 230, a practitioner 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. Those disclosures require the practitioner 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
- Of the consequences to the client of the failure to comply or the error or omission on the tax return or other submitted document.

Client Omission Case Study

Your client has omitted information from a tax return or other document that is to be submitted to the Internal Revenue Service. What should you do? Consider Audrey Wilson's client's statement in the hypothetical scenario below. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Audrey Wilson's Client Omission Problem

Audrey Wilson, a tax return preparer, is preparing the federal income tax return and associated documents for her client. In the information the client provided he noted that he owns three houses that he rents to tenants. However, the income information he supplied showed rental income only from two of the rental units.

The client offhandedly indicated he had a "special arrangement" with respect to the third rental unit. Upon further questioning, Audrey learned that the tenant in the third unit was a local attorney who, in lieu of rent, provided certain legal services to her client that included a review of rental agreements, submission of various legal documents to the city and performance of other personal and business legal work.

What are Audrey's obligations under the regulations governing practice before the Internal Revenue Service?

Click here to compare your answer

Requirement for Accuracy

Treasury Department Circular No. 230 addresses the issue of a practitioner's accuracy in preparing or assisting in the preparation of tax returns and other documents. Pursuant to applicable regulations, a practitioner must exercise due diligence 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 practitioner to the Department of the Treasury; and
- Determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

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.

For example, the Internal Revenue Service prescribes certain due diligence requirements with respect to determination of a client's refundable income tax credits—the earned income credit, American opportunity tax credit and child tax credit, in other words—and eligibility to file as Head of Household. In doing that, it requires:

- Completion of a due diligence checklist (Form 8867); and
- The practitioner to –

- Interview the taxpayer, ask adequate questions, contemporaneously document the taxpayer's responses on the return or in the practitioner's notes, review adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status and to compute the amount(s) of the credit(s);
- Complete Form 8867 truthfully and accurately and complete the actions described in it for any applicable credit(s) claimed and HOH filing status, if claimed;
- Submit Form 8867 in the manner required; and
- Keep all five of the following records for 3 years from the latest of the dates specified in the Form 8867 instructions under Document Retention -
    1. A copy of Form 8867,
    2. The applicable worksheet(s) or your own worksheet(s) for any credit(s) claimed,
    3. Copies of any documents provided by the taxpayer on which you relied to determine the taxpayer's eligibility for the credit(s) and/or HOH filing status and to compute the amount(s) of the credit(s),
    4. A record of how, when, and from whom the information used to prepare this form and the applicable worksheet(s) was obtained, and
    5. A record of any additional information you relied upon, including questions you asked and the taxpayer's responses, to determine the taxpayer's eligibility for the credit(s) and/or HOH filing status and to compute the amount(s) of the credit(s).

In completing the checklist or in determining eligibility for the credit(s) or filing status claimed, the practitioner must:

- Neither know nor have reason to know that information used in determining the taxpayer's eligibility for, or the amount of, the credit is incorrect, incomplete or inconsistent;
- Not ignore the implications of information furnished by the client or known by the practitioner;
- Make reasonable inquiries if a well-informed tax return preparer 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
- Retain various records with respect to credit/filing status eligibility and credit computation.

A practitioner is presumed to have exercised due diligence if he or she relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training and evaluating that person. However, when relying on another's work product in providing written client advice, bear in mind that the practitioner must:

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

In evaluating whether a practitioner's advice complied with these requirements, the IRS will apply a reasonable practitioner standard.

Requirement for Accuracy Case Study

Harry Barnes, a tax return preparer, is determining his client's eligibility for the earned income tax credit and believes his client is not being candid about his income or number of children. Evaluate Harry's actions. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Harry Barnes and the Client's Inaccurate Answers

In reviewing the client's records, Harry notes that the income disclosed is below the threshold at which the client would be ineligible for the earned income tax credit. Furthermore, Harry believes the client's expenses are disproportionately high relative to his income. In doing his due diligence, Harry reviewed the client's tax return for the previous year and found that, although the client reported receiving only

$3,000 in investment income this year, his investment income in the previous year had been $25,000. Based on the client's records, apparent living standard, strong interest in the earned income tax credit and previous tax return, Harry believes the information and records he received from the client are incorrect and that the client may be attempting to deceive him.

Despite that concern, Harry simply asked the client if all the information and records supplied were complete and accurate. The client answered that they were, and Harry completed and signed the tax return. The client claimed a substantial earned income tax credit.

Click here to compare your answer

Return of Client Records

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

Treasury Department Circular No. 230 addresses the requirement for a practitioner's return of client records and provides that, although a practitioner may retain copies of the records returned to a client, the practitioner 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.

A practitioner's reluctance to return a client's records may stem from the existence of a dispute over fees payable for the practitioner's work. The existence of such a dispute generally does not relieve the practitioner of his responsibility to return client records.

However, if applicable state law permits the practitioner to retain client records in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's income tax return. In such a case, the practitioner must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner 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 a practitioner 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 practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that ***pre-existed*** the retention of the practitioner by the client;
- Materials that were ***prepared by the client*** or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation; and
- Any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if 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 practitioner or his or her firm if the practitioner 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.

Request for Return of Records Case Study

You have completed your work for the client, but he refuses to pay you and demands that his records be returned. Should you return his records? Consider what Sue Willoughby did in the hypothetical

scenario below. Evaluate her actions, identify what she did incorrectly and determine what she should have done instead. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Sue Willoughby and the Non-Paying Client

Sue Willoughby completed her client's tax return and gave him her bill for the previously agreed-upon $200 preparation fee. The client inquired as to the amount of time it required to prepare his return, and, when Sue told him it was about two hours, he refused to pay the fee. She discussed the fee with her client and, when the client still refused to pay, she refused to give him the completed return or his records. Her client has complained to the IRS.

Click here to compare your answer

Conflicting Interests

Treasury Department Circular No. 230 addresses the issue of conflicting interests. In general, a practitioner 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 practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

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

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

Conflict of Interest Case Study

You have determined that you have a conflict of interest in representing a particular client. What should you do? Must you refuse to work with the client? Not tell the client and hope for the best? Consider how Bob Brown handled the situation in the hypothetical scenario below. Evaluate what he did, identify what he did incorrectly and determine what he should have done instead. When you have completed your evaluation, turn to the *Answers to Chapter Review Quizzes* section to compare your answers.

Bob Brown's Conflict of Interest

Bob Brown has prepared the joint tax returns for his married clients, Bill and Sarah, for years. When Sarah met with Bob last week to have him prepare this year's tax return she said that she and Bill were divorcing and wanted to file her tax return as married filing separately to avoid the need to disclose her income to her soon to be ex-husband. This afternoon Bill met with Bob to have him complete his tax return for the year.

Bob believes he will have a conflict of interest in working with Bill and Sarah in light of their impending divorce. However, despite that interest conflict, he believes that he can provide competent and diligent representation to each of them. Accordingly, Bob discloses to both Bill and Sarah that he is

preparing the tax returns for both of them, requests that each of the parties waive the conflict of interest and agree to his representation of the other. Finally, he prepares separate written letters confirming their waiver of Bob's conflict of interest.

Click here to compare your answer

Summary

Various duties and restrictions are imposed on persons authorized to practice before the Internal Revenue Service. Among the important requirements are those relating to practitioners' solicitation of business, unauthorized practice of law, required response to IRS requests for information, knowledge of client omissions, requirement for diligence with respect to accuracy, return of client records and conflicting interests.

Practitioners are expected to meet their professional responsibilities with integrity. With respect to the solicitation of business, that requirement for acting with integrity prohibits practitioners 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 practitioner for at least 36 months.

Although the point at which a practitioner's discussion with his or her client about tax matters becomes the unauthorized practice of law, some principles offer guidance. If the practitioner's advice is provided in general informational terms it should not be deemed the unauthorized practice of law. In addition, the practitioner's engaging in a discussion concerning the client's situation would not normally be considered the unauthorized practice of law if the subject is settled in the law and is a matter of common knowledge among tax preparers.

The Internal Revenue Service may request information or records from a practitioner. In such a case, the practitioner 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 practitioner's possession or subject to his or her control, the practitioner must promptly notify the Internal Revenue Service, provide information the practitioner has concerning who has possession or control of the requested records or information and ask the client for information concerning who has the requested material. If the Internal Revenue Service requests information about an alleged violation of the regulations, the practitioner must provide any relevant information. In addition, the practitioner must testify regarding the information provided, unless he or she in good faith and on reasonable grounds believes that the information is privileged.

If a practitioner 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.

Practitioners 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 practitioner to the Department of the Treasury and to clients as to matters administered by the Internal Revenue Service.

Practitioners 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 practitioner concerning fees. Although a practitioner may retain copies of the records returned to a client, the practitioner 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.

Practitioners 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 practitioner 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 practitioner for at least 36 months following the date of the conclusion of the representation of the affected clients.

Review Quiz

1. What is the minimum number of calendar days that must pass following the last date on which a practitioner 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 of time he must retain copies of the communicated fee information?

   A. 60 days

   B. 36 months

   C. 1 year

   D. 5 years

3. Philip, a tax return preparer, is not an attorney. However, he discussed a legal matter with his client in which the governing law was settled and a matter of common knowledge among tax preparers. Which of the following statements concerning his actions is correct?

   A. He engaged in the unauthorized practice of law by discussing any legal issue with his client

   B. He did not engage in the unauthorized practice of law if he made no separate charge for his legal advice

   C. Since the matter is settled and is common knowledge among tax preparers, his discussion of it with his client does not constitute the practice of law

   D. Tax return preparers are exempt from statutes forbidding the unauthorized practice of law

4. What must a practitioner do if the practitioner 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

5. Arthur 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 – Sanctions for Regulation Violations

Introduction

Regulations governing the professional activities of practitioners that are not accompanied by consequences for violating them have little value. Treasury Department Circular No. 230 enumerates the various sanctions available to the Treasury Department to discipline a practitioner who has violated the regulations governing practice before the Internal Revenue Service. This chapter will examine those sanctions and the violations subject to them.

Chapter Learning Objectives

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

- Define the terms "censure," " suspension" and "disbarment" as they apply to tax return preparers;
- Identify the various sanctions that may be imposed for a preparer's failure to comply with applicable conduct rules;
- Recognize how appropriate monetary sanctions are determined; and
- List the types of conduct considered incompetent and disreputable.

Authorized Sanctions for Violation of Regulations

The Treasury Department is authorized to impose both monetary and non-monetary sanctions on any practitioner who violates the published regulations governing practice before the Internal Revenue Service. In accordance with Treasury Department Circular No. 230, the Secretary of the Treasury, after notice and an opportunity for a proceeding, may impose such sanctions if the practitioner:

- Is shown to be incompetent or disreputable (See **Incompetence and Disreputable Conduct** below.);
- 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 a practitioner 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 limited to:

- 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 practitioner 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 practitioner and his or her colleagues concerning the practitioner's fitness.

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

The Internal Revenue Service recently announced its censure of a tax practitioner for violating conflict of interest rules under Circular 230. In that case, the practitioner was retained by a client to take specific actions required by a

settlement agreement executed between the client and a third party. The settlement agreement directed transfers from the client to the third party. Although the practitioner was aware of the terms of the agreement, he knowingly provided misleading information upon which the third party relied. By knowingly providing misleading information, the practitioner breached a duty of care owed to the third party.

Suspension

Suspension involves the temporary banning of the 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.

In April 2011 the IRS Office of Professional Responsibility reported that a practitioner pled guilty to assisting with the client's efforts to hide income from the IRS. The practitioner was suspended for a period of 36 months. In May 2014 the OPR published that a CPA had been suspended indefinitely for aiding and abetting the preparation and filing of false tax returns among other violations.

More recently, the Internal Revenue Service announced its Office of Professional Responsibility (OPR) reached a settlement agreement including a monetary penalty with a tax practitioner for violating professional rules of conduct. His firm also accepted responsibility for knowing the practitioner engaged in misconduct in attracting clients with outstanding collection issues. The practitioner agreed to five years of probation and a 12-month suspension of practice before the IRS if the probation is violated. The firm agreed to a monetary penalty based on a percentage of the gross income from the misconduct.

Similarly, a practitioner was suspended for failure to timely file federal tax returns. Her suspension period was indefinite but was at least 36 months. A practitioner who was found to have aided in the preparation and presentation of a fraudulent return was suspended indefinitely. In another disciplinary action a practitioner was suspended indefinitely and enjoined from preparing tax returns that include frivolous positions.

Disbarment

Similar to suspension, disbarment makes the practitioner ineligible to practice before the Internal Revenue Service. Unlike suspension, however, disbarment may or may not be temporary. In many cases, a disbarred practitioner 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 a practitioner by the Treasury Department.

For example, a practitioner was disbarred from practice as a result of his conviction of a felony for which the conduct involved was deemed to render the practitioner unfit to practice before the IRS.

Monetary Sanctions

In addition to or in lieu of non-monetary sanctions, the regulations authorize the Treasury Department to impose monetary penalties on any practitioner who engages in conduct subject to sanction. Furthermore, if the practitioner 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 a practitioner's employer knew that the practitioner was engaging in activities constituting a violation of IRS regulations, it would also be subject to monetary sanctions.

Amount of Monetary Penalty

The Treasury Department is limited in the amount of monetary penalty it may impose on a practitioner. According to Treasury Department Circular No. 230, the amount of the penalty will not exceed the gross income derived or to be derived from the practitioner’s conduct giving rise to the penalty. Although applicable penalties vary depending on the violation, the penalty for tax preparers who engage in willful or reckless conduct—formerly the greater of $5,000 or 50% of the preparer’s income with respect to the return—is increased 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 a practitioner 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.

Incompetence and Disreputable Conduct

Practitioners are required to possess the necessary competence to engage in practice before the IRS. To meet that requirement for competence, a practitioner must possess and maintain the appropriate level of:

- knowledge,
- skill,
- thoroughness, and
- preparation

…necessary for the matter in which the practitioner is engaged. That required competence may be obtained through various methods, including consultation with experts in the subject matter or through study of relevant law.

Incompetence and disreputable conduct for which a practitioner may be sanctioned includes a wide range of offenses. The offenses enumerated in Treasury Department Circular No. 230 that are deemed to constitute incompetence and disreputable conduct are:

- Conviction of any criminal offense under the federal tax laws;
- Conviction of any criminal offense involving dishonesty or breach of trust;
- 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;
- 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 No. 230,
    - Through the use of false or misleading representations with the intent to deceive client or prospective client, or
    - By intimating the practitioner is able improperly to obtain special consideration or action from the internal revenue service;
- 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 evading or attempting to evade any assessment or payment of any 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 –
    - 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 practitioner when the practitioner'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 practitioner on magnetic or other electronic media when the practitioner is required to do so;
- Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number; and
- Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so.

Summary

The Secretary of the Treasury may impose monetary and non-monetary sanctions on a practitioner who is incompetent or disreputable, 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 limited in amount to the gross income derived or to be derived from the practitioner's conduct giving rise to the penalty.

Chapter Review

1. A public reprimand of a practitioner 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 a tax return preparer?

    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 a practitioner's eligibility to represent taxpayers before the IRS?

    A. Disbarment

    B. Suspension

    C. Censure

    D. The imposition of any non-monetary sanction affects a practitioner's eligibility to represent taxpayers before the IRS

4. What is the maximum monetary penalty that may be imposed on a practitioner 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.
Unauthorized practice of law	Providing of legal advice to clients by other than persons admitted to the bar except for information provided in general terms or concerning matters that are settled in the law and common knowledge among tax preparers.

Answers to Chapter Review Quizzes

Chapter 1

Question 1 Feedback

A. Your answer is correct. An unenrolled tax return preparer who signed a client's tax return or claim for refund for the taxable year or time period under examination may represent the taxpayer before IRS revenue agents, customer service representatives, and similar IRS officers and employees provided that the preparer participates in the annual filing season certificate program at the time of representation. However, such a tax return preparer is not permitted to represent taxpayers before appeals officers, revenue officers, counsel or similar IRS officers or employees. In contrast, an unenrolled preparer who does not participate in the AFSP cannot represent a client before the IRS.

B. Your answer is incorrect. Unenrolled tax return preparers must limit their professional activities to the preparation of tax returns, refund claims and other documents for sending to the IRS. Circular 230 specifically prohibits such a tax return preparer's representation of a taxpayer before an appeals officer. Please try again.

C. Your answer is incorrect. IRS rules prohibit an unenrolled tax return preparer to represent a taxpayer before a revenue officer. Please try again.

D. Your answer is incorrect. The permitted professional activities of an unenrolled tax return preparer do not include representing a taxpayer before IRS counsel. Instead, such activities are limited to preparing tax returns, refund claims and other documents for transmittal to the IRS. Please try again.

Question 2 Feedback

A. Your answer is incorrect. Circular 230 identifies the professional activities in which an unenrolled tax return preparer may engage, and the preparing of documents for IRS submission *is* such a permissible activity. Please try again.

B. Your answer is incorrect. Preparing and signing federal tax returns *are* permissible activities in which an unenrolled tax return preparer may engage. Please try again.

C. Your answer is correct. Under IRS rules, an unenrolled tax return preparer must limit his or her professional tax activities to preparing and signing tax returns, claims for refund, and other documents for submission to the Internal Revenue Service. Although an unenrolled tax return preparer who participates in the annual filing season program may represent clients before the IRS with respect to tax returns he or she has prepared, an unenrolled preparer—whether or not participating in the AFSP—is not authorized to represent taxpayers in connection with the qualification of employee plans.

D. Your answer is incorrect. The professional activities in which an unenrolled tax return preparer may engage are limited. However, preparing and signing federal tax refund claims *are* permitted professional activities. Please try again.

Question 3 Feedback

A. Your answer is incorrect. While taxpayer comments may be considered in an overall evaluation of a tax return preparer's competence, they are not considered in determining whether a violation was willful or reckless. Please try again.

B. Your answer is correct. Repeated violations of the standards for tax return preparation by a practitioner are likely to suggest that the practitioner's failure to meet the required tax return standards is due to the practitioner's willful or reckless conduct or is the result of his or her gross incompetence.

C. Your answer is incorrect. Even though frequent previous job changes may suggest a possible lack of stability, the determination of the willful or reckless nature of a particular violation is not affected by the presence or absence of the individual's employment history. Please try again.

D. Your answer is incorrect. The competency of a tax return preparer or his or her scores on a competency test play no part in the evaluation of a violation. Thus, such factors don't affect a violation's characterization as willful or reckless. Please try again.

Question 4 Feedback

A. Your answer is incorrect. Although advising a client to intentionally disregard a regulation should never be done frivolously, it may ethically be done in certain cases. Please try again.

B. Your answer is 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.

C. Your answer is incorrect. Advising a client to submit a document demonstrating an intentional disregard of a regulation solely for purposes of reducing a taxpayer's liability is unethical and may be illegal. Please try again.

D. Your answer is incorrect. If the application of the regulation could be expected to be inequitable, the practitioner may advise the client to submit a document challenging the regulation in good faith. Please try again.

Question 5 Feedback

A. Your answer is incorrect. The requirement that a tax return preparer advise his or her client with respect to any penalties likely to be imposed may apply even though the preparer did not advise the taking of such a position. Please try again.

B. Your answer is incorrect. While the possible imposition of criminal charges would certainly require that the preparer inform the client, the requirement for tendering such advice does not apply only with respect to criminal charges. Please try again.

C. Your answer is incorrect. A tax return preparer may be ethically required to inform his or her client with respect to likely penalties in many situations. Please try again.

D. Your answer is correct. Helen is required to inform her client of possible penalties in such a case. A practitioner is required to inform a client of any penalties that are reasonably likely to apply to the client with respect to:

- A position taken on a tax return if the practitioner–
  - Advised the client with respect to the position, or
  - Prepared or signed the tax return; and
- Any document, affidavit or other paper submitted to the Internal Revenue Service.

Chapter 2

Answers to Hypothetical Case Studies

Bob Archibald's Solicitation Activities

Bob is guilty of several ethical violations related to his business solicitation practices. He has clearly erred by guaranteeing clients a refund; certainly, there is no way that he could know that any particular client would qualify for a refund without a review of the client's records. While his publication of professional fees is acceptable, his increase in the fees charged just two weeks following their last publication is an ethical violation. Furthermore, Bob's agreement to pay the association president a commission—essentially a referral "kickback"—is unethical. Also, although Bob's advertising flyer states that "additional fees may apply in certain situations," his charging the client an additional fee for preparation of EITC forms without first disclosing to the particular client that he or

she will be charged an additional fee for their preparation is in violation of the Circular No. 230 ethical standards.

Return to text

Shirley Connor's Advising Activities

Despite the general lack of clarity concerning just what constitutes the unauthorized practice of law, it is clear that Shirley is engaging in it. While Shirley could certainly discuss with her client, Barbara, the general rules governing the tax treatment of income from an irrevocable trust, her applying those general rules to Barbara's specific situation and recommending that such a trust be implemented is a violation of the rules governing the unauthorized practice of law. Furthermore, Shirley's drafting an irrevocable trust document for her client pushes her over the line into its unauthorized practice. Not only is Shirley violating the ethical rules identified in Circular No. 230 by engaging in these practices, she is leaving herself open for possible civil and criminal penalties.

What Shirley should have done is to suggest that her client seek the professional services of a local attorney.

Return to text

Bill Whitacre's Actions

Bill's ignoring the request from the IRS for his client's records is a violation of the ethical requirements contained in Circular No. 230. Whether or not the IRS employee had made a mistake in sending the request to him is irrelevant. Upon receiving the request, Bill has certain obligations that his role as a tax return preparer imposes on him.

Bill should have taken the following steps. First, he should have notified the requester that he had received the request for client records and that they were not in his possession. Second, he should have provided the requester with any information he had concerning who possesses the requested records. Finally, Bill should have asked his client who he or she believed possessed the records.

Return to text

Audrey Wilson's Client's Omission

Bartering is an exchange of property or services. The client must include the fair market value of the property or services in his income at the time such property or services are received. Accordingly, Audrey's client must include in his income the value of the forgone rent bartered in return for the attorney tenant's legal services. (The client may also deduct the value of any required business legal services provided by the tenant.)

Audrey's client's failure to disclose his bartering arrangement with his attorney-tenant may have been inadvertent or intentional. Regardless of the client's intention, however, she has two important disclosure obligations:

- She must tell her client that, in failing to include the fair market value of the legal services he received, he has failed to comply with U.S. revenue laws by omitting taxable income; and
- She must also inform her client of the consequences of submitting a tax return or other document without including the omitted income.

She cannot sign the client's tax return knowing it omits the value of the services he received in exchange for the forgone rent.

Return to text

Harry Barnes' Client's Inaccurate Answers

Harry's client may be telling him the truth about his earned and investment income and simply have suffered a bad business downturn. Alternatively, the client may have provided Harry with incorrect and/or incomplete information. Harry's asking the client if his information and records were complete and accurate is insufficient.

He needs to perform adequate due diligence. What that due diligence requires in this case is Harry's active questioning of his client. The obvious issues about which he needs to uncover the truth are:

- Why are the client's expenses so high relative to his reported income?
- What happened to the investment assets that produced $25,000 of investment income last year and only $3,000 this year?

After obtaining the client's answers to those questions and any follow-up questions that are appropriate, Harry should document the client's answers in his records. He should also disclose to his client that the IRS can examine his tax return and, if it is found to be incorrect, can assess accuracy and fraud penalties. Furthermore, the IRS can also ban the client from claiming EITC for two or ten years, depending on the level of the client's culpability.

Harry has a lot at stake in addition to a reputational risk if he fails to assess the truthfulness of his client's assertions:

- If Harry fails to comply with the EITC due diligence requirements, the IRS can assess a $545 penalty against him for each such failure.
- If he prepares the client's return and any part of an understatement of tax liability is due to an unreasonable position, the IRS can assess a minimum penalty of $1,000 against him.
- He can be subject to disciplinary action by the IRS Office of Professional Responsibility.
- He can face suspension or expulsion from participation in IRS e-file.
- He can be barred from preparing tax returns.
- He can be subject to criminal prosecution.

Return to text

Sue Willoughby and the Non-Paying Client

Sue is not required to give the client his completed tax return if he refuses to pay the billed fee. Although Circular No. 230 provides that a practitioner must promptly return the client's records to him or her, applicable state law in the state in which Sue practices may permit her to withhold them. However, even if the law permits withholding client records, Sue must return to the client those records that need to be attached to the client's tax return. In such a case, the tax return preparer must provide the client with access to review and copy any additional records needed for the client to comply with federal tax obligations.

Return to text

Bob Brown's Conflict of Interest

Bob's actions were entirely within the ethical conduct rules concerning conflicts of interest. Although a practitioner generally is not permitted to represent a client before the IRS if he or she has a conflict of interest in so doing, a practitioner may represent the client where such representation represents a conflict of interest if:

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

Return to text

Question 1 Feedback

A. Your answer is incorrect. The intention of the ethical rule relative to a tax return preparer's charging fees in excess of a published schedule is designed to avoid client confusion and resulting

misunderstanding between the practitioner and client, and a practitioner's charging more than rates published only 10 days before would violate that rule and its intention. Please try again.

B. Your answer is incorrect. Charging more than rates published only 15 days previously is a violation of IRS rules. Please try again.

C. Your answer is correct. A practitioner 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. Your answer is incorrect. Although a practitioner may wait 45 days following the publication of a schedule of fees before increasing them, the required period is shorter. Please try again.

Question 2 Feedback

A. Your answer is 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, a practitioner must retain copies of it for no less than a specified period; the period specified, however, is longer than 60 days. Please try again.

B. Your answer is correct. Practitioners are expected to retain copies of communicated fee information. The copies of such communications must be retained by the practitioner for a period of at least 36 months after the date of their last transmission or use.

C. Your answer is incorrect. The required retention period applicable to published fee schedules in IRS regulations is not one year. Please try again.

D. Your answer is incorrect. Although a practitioner may choose to retain published fee information for a five-year period, such a lengthy retention period is not required under IRS regulations. Please try again.

Question 3 Feedback

A. Your answer is incorrect. Although the discussion of any legal matter by a tax return preparer should be approached carefully in order to avoid being seen as the unauthorized practice of law, a practitioner may discuss settled law with a client. Please try again.

B. Your answer is incorrect. A non-attorney practitioner's not imposing a separate charge for his or her advice on a legal matter does not shield the practitioner from a charge of unauthorized practice of law. Please try again.

C. Your answer is correct. A practitioner's engaging in a discussion of the law and its application to a client's situation would not ordinarily constitute the unauthorized practice of law, provided the matter being discussed is settled in the law and is a matter of common knowledge among tax preparers.

D. Your answer is incorrect. Tax return preparers are not exempt from unauthorized practice of law statutes. Please try again.

Question 4 Feedback

A. Your answer is incorrect. A practitioner cannot allow himself to be a party to the omission of relevant information on a tax return. Thus, doing nothing is not an option. Please try again.

B. Your answer is 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. Please try again.

C. Your answer is 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 a practitioner and is prohibited. Please try again.

D. Your answer is correct. If a practitioner 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 practitioner must advise the client of the failure to comply and the consequences of that failure.

Question 5 Feedback

A. Your answer is correct. Irrespective of the general prohibition against a practitioner's representation of a client in the case of conflicting interests, a practitioner may represent the client where such representation represents a conflict of interest if:
    - The practitioner reasonably believes that the practitioner 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 practitioner. 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. Your answer is 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. Please try again.

C. Your answer is incorrect. Written confirmation must be made within a reasonable period of time after the informed consent; 90 days, however, is too long a period. Please try again.

D. Your answer is incorrect. Circular 230 clearly states that written confirmation must be obtained. Please try again.

Chapter 3

Question 1 Feedback

A. Your answer is 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. Your answer is incorrect. Suspension requires cessation of activities for the period of suspension and is harsher than a public reprimand. Please try again.

C. Your answer is incorrect. Disbarment means the practitioner is prohibited from engaging in the practitioner's duties and is the harshest penalty that may be imposed. Please try again.

D. Your answer is incorrect. A monetary penalty is the imposing of a fine and is generally reserved for more serious offenses. Please try again.

Question 2 Feedback

A. Your answer is incorrect. Dishonesty *is* considered disreputable conduct for which the Treasury Department may impose sanctions on the practitioner. Please try again.

B. Your answer is incorrect. A practitioner's breach of trust *is* considered disreputable conduct for which the Treasury Department may impose sanctions on the practitioner. Please try again.

C. Your answer is 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. Please try again.

D. Your answer is correct. Although a practitioner's violation of fee schedule rules may result in the imposition of sanctions, it is not considered to be disreputable conduct.

Question 3 Feedback

A. Your answer is incorrect. A practitioner's disbarment permanently affects his or her ability to represent taxpayers before the IRS. Please try again.

B. Your answer is incorrect. Suspension affects a practitioner's ability to represent taxpayers before the IRS for the duration of the suspension. Please try again.

C. Your answer is correct. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS.

D. Your answer is incorrect. Not all non-monetary sanctions that may be imposed affect a practitioner's ability to represent taxpayers before the IRS. Please try again.

Question 4 Feedback

A. Your answer is incorrect. No maximum dollar monetary penalty that may be imposed on a practitioner is specified. Please try again.

B. Your answer is correct. The amount of any penalty imposed on a practitioner will not exceed the gross income derived or to be derived from the practitioner's conduct giving rise to the penalty.

C. Your answer is incorrect. The Office of Professional Responsibility reserves the right to impose sanctions for violations of its rules. Please try again.

D. Your answer is incorrect. Although no specific dollar maximum is specified, the rules do impose a maximum monetary penalty. Please try again.

Question 5 Feedback

A. Your answer is 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. Please try again.

B. Your answer is incorrect. A practitioner's making of false accusations in connection with practice before the IRS is contemptuous conduct if the practitioner knows the accusations to be false. Please try again.

C. Your answer is incorrect. Publishing libelous matter in connection with practice before the IRS is considered contemptuous conduct. Please try again.

D. Your answer is 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.

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Final Exam

Tax Return Preparer Ethical Issues

The following exam is attached only for your convenience. To access the official exam for this self-study course, please log into your account online and take the Final Exam from the course details page. A passing score of 70 percent or better will receive course credit and a Certificate of Completion.

1. Henry is an unenrolled tax return preparer who participates in the annual filing season program. Before which of the following IRS personnel may he represent a taxpayer whose return he has prepared?
   a) An appeals officer
   b) A revenue officer
   c) A revenue agent
   d) Counsel

2. Phyllis, an unenrolled tax return preparer, is prohibited from engaging in which of the following professional activities?
   a) Preparing documents for submission to the IRS
   b) Preparing and signing federal tax returns
   c) Preparing and signing claims for tax refunds
   d) Representing taxpayers as to the qualification of their employee plans

3. Arthur, a tax return preparer, has been asked by his client to sign a claim for refund that contains a position he believes lacks a reasonable basis. Under what circumstances may he comply with his client's request?
   a) When directed by a supervisor to sign the return
   b) Never
   c) When the amount of understated tax liability as a result of the position is less than $1,000
   d) Only after receiving permission from the accounting standards board

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

5. Helen, a tax return preparer, routinely publishes a schedule of the fees she charges her clients. For how long must she keep copies of the published schedule following its last use?
   a) 1 year
   b) 2 years
   c) 3 years
   d) 4 years

6. Helen is an unenrolled tax return preparer who participates in the annual filing season program. How may she refer to herself when advertising for clients?
   a) As "certified"
   b) As an IRS employee

—choices continued on next page—

c) As a tax return preparer who holds a valid Annual Filing Season Program Record of Completion for the calendar year and has complied with the IRS requirements for receiving the Record of Completion
d) As "chartered"

7. Which of the following published "fees" would not be permitted under the regulations governing practice before the Internal Revenue Service?
   a) Fixed fees for specific routine services
   b) Hourly rates
   c) Initial consultation fees
   d) Contingent fees based on reduced income tax liability

8. A _____ is a term that refers to a public reprimand of a practitioner by the Office of Professional Responsibility.
   a) Suspension
   b) disbarment
   c) censure
   d) monetary penalty

9. Which of the following sanctions affects a practitioner's eligibility to represent taxpayers before the IRS?
   a) Censure
   b) Suspension
   c) Imposition of a $545 penalty
   d) Imposition of a $5,000 penalty

10. Under what circumstances would a monetary penalty be imposed on an employer for the improper acts of a tax return preparer in its employ?
    a) If the preparer was a statutory employee
    b) If the employer knew or should have known the preparer was engaging in prohibited acts
    c) If the preparer was compensated on the basis of returns prepared
    d) An employer would not be liable for the unauthorized acts of