2017 Ethics Part 1
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1884
- May 1 (Labor Day) – The eight-hour workday is first proclaimed by the Federation of Organized Trades and Labor Unions in the United States
- May 8 – Harry S. Truman, 33rd President of the United States from 1949 till 1953, 34th Vice President of the United States from January till April 1945 (died 1972)
- August 5 – The cornerstone for the Statue of Liberty is laid on Bedloe’s Island in New York Harbor
- October 6 – The United States Naval War College is established in Newport, Rhode Island
- October 11 – Eleanor Roosevelt, First Lady of the United States from 1933 to 1945 (died 1962)
- November 4 – United States presidential election, 1884: Democratic Governor of New York Grover Cleveland defeats Republican James G. Blaine in a very close contest to win the first of his non-consecutive terms.
- December 6 – The Washington Monument is completed

Origin of Circular 230
- Passed by Congress and signed into law by President Chester Arthur in 1884
- Section 330 under Title 31
- Authorized the Secretary of Treasury/IRS to:
  - Regulate the practice of representatives of persons before the Department of Treasury
  - Requires the applicant to be of “good character” and “good reputation”
  - Have the necessary qualifications to enable the representative to provide a service
  - Have the competency to advise and assist persons presenting their cases
Origin of Circular 230

- In addition the statute provides for discipline:
  - Providing IRS with the authority to “discipline and representation who exhibits
    - Incompetence
    - Disreputable conduct
    - Violates the regulation provided in § 330
    - Who “with intent to defraud willfully and knowingly”

Regulating Tax Professionals — Not Dead Yet

- Amends the IRC to require the Treasury to regulate tax return preparers who are not otherwise subject to regulation
- The bill authorizes Treasury to impose a $1,000 penalty for each federal tax return or other document prepared by a tax return preparer during a period in which such preparer:
  - (1) is not in compliance with applicable Treasury regulations, or
  - (2) is suspended or disbarred from acting as a tax return preparer under such regulations

Current Status

- Sponsor: Rep. Cohen, Steve [D-TN-9] [Introduced 02/15/2017]
- Committees: House - Ways and Means
- Action By: House of Representatives 02/15/2017 Sponsor introductory remarks on measure
- Action By: House of Representatives 02/15/2017 Introduced in House
Loving and Ridgely

- Loving blocked the original attempt by Treasury to regulate — lack of authority was the determination
- Ridgely — clarified that the preparation of a tax return did not constitute “practice before the IRS”
- Steele – PTIN Issue

What is Ethics?

- Study and philosophy of human conduct
- Principles and values
- Boundaries for behavior
- Rules
- Values — integrity, accountability and trust
- A guide of behavior in the business world
- Ethics is doing what is Right, Honest, Fair and Legal
- Ethics is following those standards of right and wrong that govern our actions as a member of our profession
- Webster’s Dictionary definition: “A discipline dealing with good and evil and with moral duty. Moral principles or practice”

Ethical Decision Making – Sometimes Difficult

- Economic pressures
  - Client is looking for a refund/does not want to owe
  - Can they get a better deal elsewhere
  - You look at time and effort and what to charge
  - Some expect an Earned Income Credit — you must explain why there is no credit
  - Lack of understanding of tax law
- Professional pressures
  - Competition
  - Cost of doing business
  - Keeping up with tax education and knowledge
  - Amended do I charge a fee? Customer Service what services do I provide?
  - Do I take a client when I do not know anything about the tax law related to the clients issues?
Ethical Decision Making

- Justify - We all justify our actions
  - I am not getting paid enough so I work from home once a week, but I don’t work
  - It is OK to fudge on my taxes, I don’t make enough to get audited
  - Let’s not amend the return, I do not think IRS will catch the error
  - It’s OK to claim 100% business when I use the vehicle for personal use – I don’t keep a log book because I use it 100%
  - Everybody cheats I am just following the herd

Why Are Business Ethics Important?

- Is a specific business practice acceptable?
- Do you understand and use your current values and convictions when making business decision?
- Business decision vs Tax Decisions is there a difference?
- How do you advise a client who thinks it is OK not to declare CASH income/ or to cheat on taxes?

Office of Professional Responsibility

- Responsible for setting, communicating, educating, and enforcing standards of competence, integrity and conduct among tax professionals
- Governs all persons or entities who prepare tax returns for compensation
- Define a practitioner’s duty to clearly communicate with clients, establish facts, advise as needed and act fairly and with integrity to practice
- Updated Circular 230 adds definitions present in the IRC
Tax Practitioner Conduct Standards

- Treasury Circular 230
- Internal Revenue Code sections for preparer penalties
- Moral codes of professional conduct – state tax professional organizations
  - American Institute of CPA (AICPA)
    - Code of Professional Conduct
    - Statements of Standard Practice

Circular 230

- Five Key Sections
- Rules Governing Authority to Practice
- Duties and Restrictions relating to practice before the Internal Revenue Service
- Sanctions for violation of the regulations
- Rules Applicable to Disciplinary Proceedings
- General provisions

What is Practice Before IRS

- Communicating with the IRS on behalf of a taxpayer regarding the taxpayer’s rights, privileges, or liabilities under laws and regulations administered by the IRS
- Representing a taxpayer at conferences, hearings, or meetings with the IRS – an asset for your profession
  - IRS still has the authority to suspend, disbar or otherwise sanctioned practitioners from representing a client before the IRS
**American Jobs Creation Act – Tax Shelter Provisions**

- “Secretary of Treasury is not limited to impose standards applicable to rendering advice with respect to any entity, transaction plan or arrangement, or other plan which the Secretary determines has a potential for tax avoidance or evasion”

**Why is Circular 230 Important?**

- Allows Firms to avoid penalties
- Avoid Malpractice claims
- Helps the clients avoid penalties or even audits
- To practice within the Circular 230 guidelines provides for confident and trained staff
- Defines the professional duties of a tax preparer
- Quality control
- Sets a high standard to achieve excellence
- Preserves the integrity and ethical practices of the firm

**Does Circular 230 Define Ethics?**

- NO
- Ethics is a code of conduct
- Integrity
- Character
- Honesty
- Common sense
- Doing the right thing
- Based on each persons values and beliefs
Scenarios You Face Daily

• When to accept a new client?
• When to fire the client?
• Explaining and clarifying issues
• Does client understand the issues
• Procrastination
• When to did deeper and ask more questions?
• What are YOUR limitations?
• Are you up to date with new law and old law that has changed and procedures to serve your client?

POLLING QUESTION

How do I Keep my Clients Information Safe?

• Gramm-Leach Billey Act of 1999 requires certain standards concerning safeguards of Personal Identifying Information (PII)
• You must:
  • Secure the confidentiality of clients records and information
  • Protect the information from threats to security and integrity breaches
  • Protect against unauthorized access to PII
  • Have a Written plan in place – Written Security Plan
Security Plan

- Maintain as list of all locations where clients data is stored or handled
- Determine the risk and impact of unauthorized access, use, disclosure, modification or destruction of client’s data
- Consider how employees and contractors have access or use of the data
- Test, monitor and revise the plan as needed to stay current with internet security of data

Privacy Notices

- Tax Professionals should inform their clients in writing that an information security plan is in place

Duty to Safeguard Customer Information

- FTC standards apply to anyone in business of completing income tax returns
- Security program
  - Must be written in readily accessible parts
  - Appropriate administrative, technical, and physical safeguards
Ethical Obligations

What Are Your Ethical Obligations?

- Self
  - Compliant with all tax obligations
  - Only take cases you can handle
  - Stay impersonal
  - Education
- Government
  - File accurate and timely tax returns
  - Due Diligence
  - Work with IRS when required

Subpart A Rules Governing the Authority to Practice
### Rules Governing the Authority to Practice

- 10.2 Definitions
- 10.3 Who may practice
- 10.6 Term and renewal of status as an EA, ERA, RTRP and Annual Filing Season Program participants
- 10.7 Representing self, limited practice
- 10.8 Return preparation
- 10.9 CPE providers and continuing education programs

#### 10.2 Definitions

- Attorney
- Certified Public Accountant
- Commissioner
- Practice before the Internal Revenue Service
- Practitioner
- Tax return
- Service
- Tax Return preparer

#### 10.3 Who May Practice

- Written Declaration
- Rendering advice
- Enrolled actuaries – limitations
- Enrolled retirement plan agents – limitations
  - After February 12, 2016, the IRS will no longer be offering the ERPA Special Enrollment Examination (ERPA SEE) to become an Enrolled Retirement Plan Agent (ERPA)
- Registered Tax Return Preparers – limitations
- Others
10.6 Term & Renewal Status

- Renewal/Valid for Period on registration card/certificate
- Change of Address
- Renewal periods EA’s
  - Between November 1 and January 31, effective April 1
- Renewal periods ERPA’s
  - Between April 1 and June 31, effective April 1

Keep Your Contact Information Current

- If contact information has changed since the time of the last renewal, please notify IRS by fax or mail the address change:
  - Office of Practitioner Enrollment
  - P.O. Box 33968
  - Detroit, MI, 48232
  - OR
  - Fax: (855) 889-7959
- Please include your name, prior contact information, new contact information, social security number or tax identification number, and the date

10.6 Term & Renewal Status

- Enrollment Year – January 1-December 31
- 72 hours of CPE including 6 hours of ethics
- Minimum of 16 hours of CPE plus 2 hours of ethics per enrollment year
- Enrollment during cycle – special requirements
- RTRP – Keep up CPE requirements-grandfathered into the Annual Filing Season program
Qualifying Continuing Education

- IRS approved education sponsor
- Formal program
- Correspondence or individual study
- PTIN provided to receive credit in IRS database
- Instructor/Speaker - limited to 6 CPE hours annually – for EA’s and ERPA’s
- Instructor/Speaker – limited to 4 hours for RTRP
- Contact hour – to 50 minutes for EA’s – 60 minutes for attorneys
- Recordkeeping requirements
- https://www.ceprovider.us/public/default/listing

Generally Displayed if Approved provider

Polling Question
10.7 Representing/ Limited Practice

- May appear on own behalf
- May represents others
  - Immediate family
  - Employer
  - General partner or full time employee
  - Officer or full time employee
  - Trust, receivership, guardianship or estate
- Limitations

Limited Representation Changed in 2016

- Unenrolled preparers have limited practice rights
- They may no longer represent clients whose returns they prepared and signed effective January 1, 2016

Limited Representation

Beginning Jan. 1, 2016, there will be changes to the representation rights of return preparers

- In addition to being included in the public directory of tax return preparers, the Annual Filing Season Program – Record of Completion differentiates you in the marketplace
- Attorneys, CPAs, and enrolled agents will continue to be the only tax professionals with unlimited representation rights, meaning they can represent their clients on any matters including audits, payment/collection issues, and appeals
- Annual Filing Season Program participants will have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service
Annual Filing Season Program

- The Annual Filing Season Program is a voluntary program designed to encourage tax return preparers to participate in continuing education (CE) courses
- Unenrolled return preparers can elect to voluntarily demonstrate completion of basic 1040 filing season tax preparation and other tax law training through continuing education
- Return preparers who complete the requirements for the Annual Filing Season Program will be issued a Record of Completion that they can display and use to differentiate themselves in the marketplace if desired

Annual Filing Season Program

- Preparers who complete the AFSP will also be included in a new public database
- The Directory of Federal Tax Return Preparers with Credentials and Select Qualifications will only include attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents (ERPAs), enrolled actuaries, and individuals who have received an Annual Filing Season Program – Record of Completion

Annual Filing Season Continuing Education Requirements

<table>
<thead>
<tr>
<th>Course Code</th>
<th>Description of Program/Category</th>
<th>Annual Federal Tax Education (150 Hours)</th>
<th>Tax Law, Business Law</th>
<th>Hours of CE Credits</th>
<th>Total Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFSP</td>
<td>Federal income tax return preparers</td>
<td>150 hours</td>
<td>3</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Individual return preparers</td>
<td>150 hours</td>
<td>5</td>
<td>15</td>
<td>2</td>
</tr>
</tbody>
</table>

- Attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents (ERPAs), enrolled actuaries, and individuals who have received an Annual Filing Season Program – Record of Completion.
10.8 Return Preparation

- Preparing all or substantially all of a tax return
  - § 7701(a)(36)
  - PTIN
- Preparing or assisting in the preparation
- PTIN requirement
- Employee of a non tax preparation firm
- Supervised employees
- Registered Tax Return Preparers
- Annual Filing Season Program (AFSP)

Supervised Employees

Notice 2011-6

- Supervised preparers are individuals who do not sign, and are not required to sign, tax returns as a paid return preparer but are:
  - Employed by attorney or CPA firms OR employed by other recognized firms that are at least 80 percent owned by attorneys, CPAs, or enrolled agents
  - AND
    - Who are supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary who signs the returns prepared by the supervised preparer as the paid tax return preparer
    - When applying for or renewing a PTIN, supervised preparers must provide the PTIN of their supervisor
    - The supervisor’s PTIN must be a valid and active PTIN
  - Supervised preparers may NOT:
    - Sign any tax return they prepare or assist in preparing
    - Represent taxpayers before the IRS in any capacity
    - Identify themselves as a Circular 230 practitioner

Who is a Non-Form 1040 Series Preparer?

- Non-Form 1040 series preparers are individuals who do not prepare, or assist in the preparation of, any Form 1040 series tax return or claim for refund, except a Form 1040-PUR or Form 1040-SS, for compensation
- When applying for or renewing a PTIN, non-Form 1040 series preparers must certify that they do not prepare, or assist in the preparation of, any Form 1040 series tax return or claim for refund, except a Form 1040-PUR or Form 1040-SS, for compensation
- Non-Form 1040 series preparers may:
  - Sign any tax return they prepare or assist in preparing
  - Represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination of the individual’s tax return or claim for refund for the taxable year under examination
- Non-Form 1040 series preparers may NOT:
  - Prepare or assist in preparing any Form 1040 series tax return or claim for refund, except a Form 1040-PUR or Form 1040-SS, for compensation
  - Identify themselves as a Circular 230 practitioner
10.9 CPE Providers

- Defined by this section
- Renew annually and pay fee
- Certificates of completion
- Maintain records for 4 years
- Continuing Education Provider Number

Subpart C Sanctions for Violation of the Regulations

- 10.50 Sanctions
- 10.51 Incompetence and Disreputable Conduct
- 10.52 Run down of Violations
10.50 Sanctions

- OPR has the authority to:
  - Censure
  - Suspend or
  - Disbar
- Pre-Allegation Letter – generally
  - Advised of the compliant
  - Send any information to explain yourself or actions
  - Soft letter (reprimand)

10.50 Sanctions

- Can impose a monetary penalty
  - Individual or firm
- Penalty cannot exceed gross income derived from the conduct giving rise to the penalty
  - In addition to any sanction
  - Will consider all facts and circumstances

Polling Question
10.51 Incompetence and Disreputable Conduct

- 18 sections of which 3 are new
  - Conviction of a criminal offense or penalty
  - Giving false or misleading information
  - Soliciting employment which is prohibited
  - Willfully assisting a client to violate any federal tax law or implement an illegal plan
  - Failure to file a tax return
  - Misappropriation of funds
  - Bribery, false threats, coercion, when working with an employee of the IRS

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10.51- Incompetence and Disreputable Conduct

- Willfully disclosing taxpayer information when not authorized
- Failure to file electronically
- Failure to have a PTIN when required
- Representing a client without a POA when one should be on file

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10.51-Incompetence and Disreputable Conduct

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

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Center for Agricultural Law & Taxation
10.53- Receipt of Information Concerning Practitioner

- IRS employee can do a referral
- Others can also file a report

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Polling Question

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Subpart D Rules Applicable to Disciplinary Proceedings
Subpart D Rules Applicable to Disciplinary Proceedings

- Ask if you want a Conference call
  - Very serious, not a reprimand
  - Present the whole case
  - Can propose your own discipline
  - A censure is a one time public reprimand
- Settlement Agreement – private in some sense
  - Discipline get published in the IRM, but no information about the terms of the agreement

Choose Not to Settle

- Commence a Proceeding – file a complaint
- Filed with an Administrative Law Judge
  - Contracted with OPR to perform this service
  - No Federal District Court or Tax Court
  - Hearing scheduled – unless resolved before
  - Evidence is presented and arguments made
  - Makes the final determination
    - 30 days to appeal to the Treasury Appellate Authority
    - Treasury Appellate Authority – arm of the Chief Counsel’s Office OPR must accept TAA decision
  - Practitioner still has one more level – file with Federal District Court
Opportunities

- To have your say
- Present your side of issue
- Have your day in court
- Standard of Proof - Willfulness is an issue
  - Must prove by “clear and convincing evidence”
  - Lower standard than “beyond a reasonable doubt” – criminal cases
  - It is more than probable clause

Devil Made Me Do It

- Taxpayer’s Defense
  - Why would my preparer put it on my return if it wasn’t correct
  - My preparer never told me I could not do it
  - I assume it was OK if it is on the return
  - My preparer never explained the return
  - We discussed it and they stated it was OK
  - Willful blindness will not work

Communication/ Documentation

- Ask questions
- If something is suspicious follow up on the issue
- Educate your client
- Pick up on side comments – agents do
- Make sure your client’s understand critical issues
- Document those conversations
The Scoop – Upcoming Dates

- July 19
- August 2
- August 16
- August 30
- September 13
- October 4
- October 18
- November 1
- Held at 8:00 am and 12:00 pm Central time

Upcoming Webinars
http://www.calt.iastate.edu/calendar-node-field-seminar-date/month

- Form 1099 Preparation July 13
- Tax Basis for Farmers July 24
- Reconstructing Records for Tax Compliance August 17
- Uber/Lyft Drivers and Business Expenses August 22
- Tax Reform and New Law Update October 17
- New Partnership Audit Rules October 19

Upcoming Seminars – Mark Your Calendar – Final Dates

- S Corporation – July 20-21, 2017, Live and Webinar
- September 21, 2017 Ag Law Seminar, Live and Webinar
- September 22, 2017 Farm and Estate Tax Review, Live and Webinar
- Retirement and Social Security Issues (Webinar) = October 10-11, 2017
The Schedule is Finalized for the 44th Annual Federal Income Tax Schools

- November 2-3, 2017 – Maquoketa, Iowa – Centerstone Inn and Suites
- November 6-7, 2017 – Le Mars, Iowa – Le Mars Convention Center
- November 8-9, 2017 – Atlantic, Iowa – Cass County Community Center
- November 9-10, 2017 – Mason City, Iowa – North Iowa Area Community College
- November 16-17, 2017 – Ottumwa, Iowa – Indian Hills Community College
- November 20-21, 2017 – Waterloo, Iowa – Hawkeye Community College
- December 11-12, 2017 – Ames, Iowa and Live Webinar – Quality Inn and Suites

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