CONTINUING EDUCATION

IRS CIRCULAR 230

2 CPE Hours

Course 9015

Self-Study Online
Sequoia CPE

IRS CIRCULAR 230
(COURSE #9015H)

COURSE DESCRIPTION

This course is designed to meet general ethics requirements. It covers the IRS Circular 230 and Statements on Standards for Tax Services

LEARNING ASSIGNMENTS AND OBJECTIVES

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

ASSIGNMENT 1: **SUBJECT**

IRS Circular 230

Statements on Standards for Tax Services

Study the course materials from pages 1 to 56

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

Objectives:

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

ASSIGNMENT 2:

Complete the Online Exam

NOTICE

This course is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Since laws are constantly changing, and are subject to differing interpretations, we urge you to do additional research and consult appropriate experts before relying on the information contained in this course to render professional advice.

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EXAM OUTLINE

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

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

- **LICENSE RENEWAL INFORMATION:** This course (#9015H) qualifies for **2** CPE hours.

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

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

ENJOY YOUR COURSE

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CHAPTER 1: IRS CIRCULAR 230

Chapter Objectives

After completing this chapter, you should be able to:

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

Introduction

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

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

I. CIRCULAR 230

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

A. EXPLANATIONS OF PROVISIONS

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

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

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

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

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

(c) Limited practice –

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

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

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

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

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

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

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

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

(2) Limitations.

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

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

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

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

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

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

Observation

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

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

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

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

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

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

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

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

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

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10.37 Requirements for written advice

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SECTION 10.20 Information to be furnished.

(a) To the Internal Revenue Service.

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

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

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

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

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

SECTION 10.21 Knowledge of client's omission.

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

Observation
Errors and Omissions

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

SECTION 10.22 Diligence as to accuracy.

(a) In general.

A practitioner must exercise due diligence:

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

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

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

(b) Reliance on others.

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

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

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

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

Observation
Due Diligence

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

IRS Enrolled Agent Indicted for Conspiracy to Defraud the IRS

The Internal Revenue Service announced that its Office of Professional Responsibility obtained the disbarment of enrolled agent LMW for stealing a client's tax payments and for preparing tax returns with false deductions for multiple clients. LMW's enrolled agent status and her ability to prepare federal tax returns were revoked for at least five years.

"Practitioners who disregard their responsibilities to the tax system and their clients can expect to hear from OPR," said Karen L. Hawkins, director of OPR. "Any tax professional who steals from a client or causes them undue tax problems is unfit to practice before this agency."

In a Final Agency Decision, the Administrative Law Judge (ALJ) disbarred LMW for misappropriating client payments intended for the IRS in furtherance of an offer in compromise, and for preparing multiple returns containing Schedule C deductions for which she could not produce substantiation on audit.

LMW was engaged to represent a taxpayer in a collection matter. The client gave LMW two money orders totaling $1,500 to forward to the IRS along with an offer in compromise for delinquent taxes. It was found by the ALJ that LMW altered, endorsed and cashed the money orders for her own personal use, which are acts of willful incompetent and disreputable conduct under Circular 230.

The ALJ also found that LMW prepared Forms 1040 for seven clients claiming Schedule C deductions that were unsubstantiated and unsupportable. It was found that LMW failed to exercise due diligence in preparing the Schedule C's, thereby violating multiple due diligence provisions contained in Circular 230.

LMW also failed to respond to the administrative complaint and the motion for default judgment. The ALJ determined that because LMW failed to respond either to the complaint or to the motion for default judgment, she was deemed to admit all the allegations in the complaint, and to not oppose the default motion.

SECTION 10.23 Prompt disposition of pending matters.

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

Observation
Handling Matters Promptly

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

Example

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

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

A practitioner may not, knowingly and directly or indirectly:

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

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

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

(a) Definitions.

For purposes of this section:

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

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

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

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

(5) Rule includes Treasury regulations, whether issued or under preparation for issuance as notices of proposed rulemaking or as Treasury decisions, revenue rulings, and

revenue procedures published in the Internal Revenue Bulletin (see 26 CFR 601.601(d)(2)(ii)(b)).

(b) General rules

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

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

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

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

(c) Firm representation.

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

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm

acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the particular matter(s) requiring isolation. The statement must be retained by the firm and, upon request, provided to the office(s) of the Internal Revenue Service administering or enforcing this part.

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

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

Observation

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

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

SECTION 10.26 Notaries.

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

Observation

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

SECTION 10.27 Fees.

(a) In general.

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

Observation

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

(b) Contingent fees.

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

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

(i) An original tax return; or

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

Observation

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

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

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

(c) Definitions. For purposes of this section—

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

(2) Matter before the Internal Revenue Service includes tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws

or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

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

SECTION 10.28 Return of client's records.

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

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

Observation

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

Observation
Client Records

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

AICPA and State Law Comparison

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

SECTION 10.29 Conflicting interests.

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

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

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

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

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

(2) The representation is not prohibited by law;

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

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

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

Observation
Conflicts of Interest

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

SECTION 10.30 Solicitation.

(a) Advertising and solicitation restrictions.

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

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) Fee information.

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

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

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

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

(c) Communication of fee information.

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

(d) Improper associations.

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

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

Observation
Solicitation

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

SECTION 10.31 Negotiation of taxpayer checks.

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

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

Observation
Negotiating Checks

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

SECTION 10.32 Practice of law.

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

SECTION 10.33 Best practices for tax advisors.

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

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

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

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

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

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

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

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

(a) Tax returns.

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

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

(A) Lacks a reasonable basis;

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

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

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

(A) Lacks a reasonable basis;

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

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

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

(b) Documents, affidavits and other papers

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

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

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

(ii) That is frivolous; or

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

(c) Advising clients on potential penalties.

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

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

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

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

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

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

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

(d) Relying on information furnished by clients. A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or

signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

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

Observation
Tax Return Positions

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

SECTION 10.35 Competence.

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

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

SECTION 10.36 Procedures to ensure compliance.

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

the Internal Revenue Service may identify one or more individuals subject to the provisions of this part responsible for compliance with the requirements of this section.

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

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

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

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

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

Observation

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

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

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

Observation
Supervisor Responsibilities

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

SECTION 10.37 Requirements for written advice.

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

(2) The practitioner must--

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

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

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

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

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

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

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

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

Reliance is not reasonable when--

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

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

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

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

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

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

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

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

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

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

Observation
Written Tax Advice

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

SECTION 10.38 Establishment of Advisory Committees.

(a) Advisory committees.

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

(b) Effective date.

This section is applicable beginning August 2, 2011.

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

Table of Contents (this subpart)

SECTION 10.50 Sanctions.

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

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

(b) Authority to disqualify.

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

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

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

(c) Authority to impose monetary penalty

(1) In general.

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

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

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

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

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

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

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

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

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

SECTION 10.51 Incompetence and disreputable conduct.

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

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

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

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

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

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

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

Observation
Personal Tax Compliance Responsibilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Study: Disreputable Conduct

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

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

Practice Pointer: Revised Regulations on Releasing Taxpayer Information

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

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

SECTION 10.52 Violation subject to sanction.

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

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

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

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

SECTION 10.53 Receipt of information concerning practitioner.

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

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

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

(b) Other persons.

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

(c) Destruction of report.

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

(d) Effect on proceedings under subpart D.

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

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

THE TAXPAYER BILL OF RIGHTS

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

The Right to Be Informed

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

The Right to Quality Service

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

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

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

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

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

The Right to Appeal an IRS Decision in an Independent Forum

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

The Right to Finality

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

The Right to Privacy

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

The Right to Confidentiality

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

The Right to Retain Representation

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

The Right to a Fair and Just Tax System

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

CHAPTER 1: TEST YOUR KNOWLEDGE

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

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

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

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

CHAPTER 1: SOLUTIONS AND SUGGESTED RESPONSES

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

1.	**A.** Incorrect. Section 10.7 of Circular 230 states that individuals participating in rulemaking are not considered "practicing before the IRS." **B.** Incorrect. A fiduciary is considered to be the taxpayer and not a representative of the taxpayer. Therefore, they are not "practicing before the IRS." **C.** **CORRECT**. A CPA representing a taxpayer would be considered "practicing before the IRS." **D.** Incorrect. Provided an individual can present satisfactory identification, individuals may appear on their own behalf before the IRS and not have it considered "practicing before the IRS." *(See pages 1 to 4 of the course material.)*
2.	**A.** Incorrect. Circular 230 Section 10.27 does not limit a practitioner's ability to charge fixed fees for specific routine services. **B.** **CORRECT**. A practitioner charging a flat percentage fee based on the amount of refund on a Form 1040 is an example of the type of contingent fee prohibited in Circular 230 Section 10.27. **C.** Incorrect. Hourly rates are not limited by Circular 230 Section 10.27. **D.** Incorrect. Practitioners are not prohibited from charging different rates depending on the complexity of the issue. *(See pages 11 to 12 of the course material.)*
3.	**A.** **CORRECT**. Circular 230 Section 10.30 requires the practitioner to retain a copy of the actual communication from a direct mail advertisement for a period of at least 36 months from the date of the last use. **B.** Incorrect. Hourly fees may be, but are not required to be, included in all advertisements. **C.** Incorrect. Circular 230 Section 10.30 restricts a practitioner from changing the schedule of fees within 30 calendar days of the last date on which the schedule was published. **D.** Incorrect. Circular 230 Section 10.30 does not mandate the use of good faith estimates when practitioners meet prospective clients. *(See pages 15 to 16 the course material.)*

4.	**A.** Incorrect. Circular 230 Section 10.50 authorizes the Secretary of the Treasury to impose monetary penalties on practitioners that have been sanctioned. However, this is not the only correct selection. **B.** Incorrect. The Secretary of the Treasury may censure, suspend or disbar any practitioner from practice before the IRS if the practitioner is shown to be incompetent or disreputable, but this is not the only selection that is correct. **C.** Incorrect. Circular 230 Section 10.50 gives the Secretary of the Treasury the authority to disqualify appraisers, but this is not the only correct selection listed. **D.** **CORRECT**. Circular 230 Section 10.50 gives the Secretary of the Treasury the authorization to censure, suspend or disbar practitioners, to disqualify appraisers, and to impose monetary penalties. *(See pages 25 to 26 of the course material.)*

CHAPTER 2: STATEMENTS ON STANDARDS FOR TAX SERVICES

Chapter Objectives

After completing this chapter, you should be able to:

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

Introduction

In all tax return engagements, and especially those gray areas which challenge the CPA's judgment and integrity, the CPA has an ethical obligation to look at the AICPA's Statements on Standards for Tax Services (SSTSs). The SSTSs are intended to establish standards for tax practice and to define the CPA's responsibility to the client, the public, the Government and the accounting profession. The SSTSs are informative in nature. Prior to October 31, 2000 tax guidance was limited to the AICPA's Statements on Responsibilities in Tax Practice (SRTPs). The SRTPs and the SSTSs are generally the same except the previously voluntary standards are now enforceable. In the past, many CPAs stated that since they are not members of the AICPA, the SSTSs have no meaning to them. This is simply not true! The SSTSs increase the value of the CPA designation by setting CPAs apart from unscrupulous individuals who abuse the tax system. One good example is the recent IRS crackdown on fraud in the electronic filing of tax returns. The IRS now requires participants to submit a full set of fingerprints and consent to a background search. CPAs, because of their integrity and high ethical standards, are exempt from this burden. Practice standards are the hallmark of calling one's self a professional.

Another reason for understanding and adhering to the SSTSs is that the public demands it. The SSTSs are often referred to by plaintiffs' attorneys in prosecuting a tax malpractice case. Accordingly, adhering to these standards can help you avoid the courtroom and could result in discounts on your malpractice insurance premiums. The SSTSs are reproduced here for your education and convenience.

I. STATEMENTS ON STANDARDS FOR TAX SERVICES

A. SSTS-1 TAX RETURN POSITIONS

SSTS-1 describes the overall standard that a CPA should use when doing tax planning and when preparing tax returns. SSTS-1 is very similar to the crux of Circular 230. It is referred to as the "Realistic Possibility Standard".

SSTS-1

I. With respect to the tax return positions, a CPA should comply with the following standards:

a) A CPA should not recommend a tax return position or prepare or sign a tax return taking a position unless the CPA has a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged.

b) Notwithstanding paragraph a, a CPA may recommend a tax return position if the CPA: 1) concludes that there is a reasonable basis for the position, and 2) advises the taxpayer to appropriately disclose that position. Notwithstanding paragraph a, a member may prepare or sign a tax return that reflects a position if: 1) the member concludes there is a reasonable basis for the position, and 2) the position is appropriately disclosed.

II. The CPA should not recommend a tax return position that:

a) Exploits the audit selection process; or

b) Serves as a mere "arguing" position advanced solely to obtain leverage in negotiation with a taxing authority.

III. A CPA has both the right and responsibility to be an advocate for the client with respect to any positions satisfying the aforementioned standards.

How to Apply SSTS-1 to Your Tax Practice

I. Our self-assessment tax system will function only if taxpayers file returns that are true, correct and complete. A tax return is primarily a taxpayer's statement of facts. Accordingly, the taxpayer has the final responsibility for all omissions and misstatements.

II. CPAs in tax practice have a duty to the tax system as well as to their clients. However, taxpayers have no obligation to pay more taxes than their lowest legal tax. The CPA's highest duty is to the client in assisting the client achieve the lowest legal tax.

III. The standards require that a CPA in good faith believe that either:

a) The position is warranted in existing law, or;

b) Can be supported by a good faith argument for an extension, modification or reversal of existing law.

The CPA may reasonably reach the conclusion that a position is warranted based on:

a) IRS general counsel memoranda

b) Private letter rulings

c) Treaties

d) A general explanation of a tax act prepared by the joint committee on taxation.

The above sources meet this standard even if they do not meet the Section 6661 test of "authority." All that is required to meet this standard is a good faith belief that the standard is met when the return is filed.

IV. When a CPA believes that two or more positions meet the standards above, the CPA may discuss with the client:

a) A relative likelihood that the different positions could cause the client's tax return to be examined;

b) The relative likelihood that any position would be challenged in an audit.

NOTE: The IRS issues a revenue procedure annually which details what constitutes "adequate disclosure." Although the IRS determination of adequate disclosure is not controlling for purposes of SSTSs, it is nevertheless a good "safety net" that can be relied upon. See, for example, Rev. Proc. 2003-77.

V. What if the position the client wants to use could result in a taxpayer penalty?

The CPA should do the following:

a) Discuss with the client the possibility that a penalty could be assessed.

b) Advise the client that penalties are cumulative and are in addition to interest.

c) Discuss the benefits of voluntary disclosure of the position on the tax return. Inform the client that voluntary disclosure could mitigate the likelihood of penalties being imposed. The client should also be advised that disclosure would reduce the chances of the statute of limitations being extended from three years to six years.

Frequently Asked Questions

The answers to these frequently asked questions (FAQs) are based on guidance developed by the SSTS Guidance Task Force in response to questions that were presented during the SSTS public exposure period and since that time in administering the SSTSs. These FAQs are not rules, regulations, or official statements of the Tax Executive Committee issued pursuant to its rule-making authority and, therefore are not authoritative guidance.

Question: A member has concluded there is a reasonable basis for a tax return position and recommends the position to a taxpayer. What are the basic considerations in recommending disclosure that will constitute adequate disclosure?

Answer: Paragraph 14 of Statement No. 1 provides that a member's determination of whether information is "appropriately disclosed" by the taxpayer "should be based on the facts and circumstances of the particular case and the disclosure requirements of the applicable taxing authority." Disclosure should generally include a description of the position that is being taken, the amount of tax at issue, and the basis for the position. It is also important to consider whether the relevant taxing authority has specific disclosure requirements.

Question: What constitutes appropriate disclosure for purposes of Paragraph 5(b) of Statement No. 1?

Where the tax authority has a specific form for disclosure?

Where the taxing jurisdiction has administrative or guidance with required contents for disclosure?

Where there is neither form nor guidance?

Answer: Where the tax authority has a specific form for disclosure - The member should use the specific form of the tax authority for purposes of disclosure.

Where the taxing jurisdiction has administrative or guidance with required contents for disclosure - The member should follow the procedures set forth in the administrative or judicial guidance.

Where there is neither form nor guidance - The member should disclose the position being taken, the amount of tax in issue, and the basis for the position.

Question: How does a member satisfy the disclosure requirements of Statement No. 1 when the member merely recommends a tax position, but is not engaged to prepare or sign the related tax return?

Answer: A member who recommends a position, but is not engaged to prepare or sign the related tax return, will be deemed to meet the disclosure requirement, if the member advises the client concerning the appropriate disclosure of the position.

Question: A member is preparing an income tax return for a taxpayer who has made a substantial charitable contribution of artwork. While the member believes there is a reasonable basis for the appraisal report provided by the taxpayer, he does not believe it meets the tax authority's higher standard for undisclosed tax positions. Should the member prepare and sign the tax return on the basis of the taxpayer's appraisal report?

Answer: A member may still prepare or sign the return if the member concludes there is a reasonable basis for the position and the member advises the taxpayer to appropriately disclose the position.

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

Question: A member has been engaged by a taxpayer to prepare an income tax return which will be filed in State T. State T has written reporting and disclosure standards with respect to recommending tax return positions and preparing and signing tax returns. State T's standards are lower than the realistic possibility of success (RPOS) standard. The taxpayer wants to take a position that a significant amount of income is not taxable in State T because the income is

not properly sourced to State T under existing statutes, regulations, and case law. The member concludes the position does not satisfy the RPOS standard. However, the member believes that State T's statutes and regulations are not entirely clear and the taxpayer has a reasonable basis for taking the position.

If the member concludes there is reasonable basis for the position that the income is not subject to taxation in State T, what disclosure is required under Paragraph 5(b) of Statement 1?

Answer: If the position of the taxpayer does not satisfy the RPOS standard, the member should use professional judgment to determine whether the taxpayer has a reasonable basis for the position that the income is not subject to taxation in State T.

Question: A member is engaged by a taxpayer to prepare her federal individual income tax returns, which includes a Schedule C. The member has been furnished with a copy of the taxpayer's general ledger which includes expenditures for automobile expenses. The member also furnishes the taxpayer with the substantiation requirements for automobile expenses. The taxpayer has indicated she believes her auto use is 100% business. The member has informed the taxpayer she does not have adequate substantiation to deduct 100% of the automobile expenses.

May the member prepare and sign the return with 100% business use of the automobile on the Schedule C?

Answer: No. If the member determines that, in his or her professional judgment, the taxpayer does not have reasonable basis for her position of deducting 100% of the automobile expenses recorded in the general ledger, then the member should not prepare or sign the income tax return reflecting such a position. No disclosure can make this an appropriate position to take on the tax return.

Question: A member has completed and sent to the taxpayer a signed original copy of taxpayer's state tax return for the taxpayer's signature and mailing. The state does not have written standards with respect to preparing tax returns. Included in the return is an appropriate disclosure, as required under Paragraph 5(b) of Statement No. 1, of a tax return position for which the member has concluded there is reasonable basis.

Has a member complied with the standards for appropriate disclosure set forth in Paragraph 5(b) of Statement No.1 if, subsequent to sending the taxpayer a signed original copy of the completed tax return along with the appropriate disclosure attached to the taxpayer for signature and filing by the taxpayer, the taxpayer removes the disclosure(s) and files the return with the applicable taxing authority?

Answer: Yes. The member's responsibility for advising a taxpayer that a tax return position should be "appropriately disclosed" by the taxpayer is deemed to have been met if, after preparation of the tax return is complete, a copy of the original return along with the appropriate disclosure or disclosures attached is signed by the member and sent by the member to the taxpayer for signature and filing by the taxpayer.

The member should also assess whether to continue a professional or employment relationship with the taxpayer.

Question: A member is engaged to prepare the income tax returns for a corporation. The Internal Revenue Service requires the federal return to be filed electronically. The member has received and reviewed the taxpayer's tax accrual workpapers and has concluded there is not "substantial authority" for a position the taxpayer wants to take, but there is a "reasonable basis" for a position that the taxpayer wants to take.

The member timely communicates to the taxpayer there is a reasonable basis for taking the position but that it has to be appropriately disclosed by attaching a properly completed Form 8275, Disclosure Statement, to the return. The member prepares a memorandum for her files documenting this communication with the taxpayer.

The return with Form 8275 is sent to the taxpayer with an authorization form to electronically file the return with sufficient time for review and completion of the electronic filing authorization. A few days before the filing deadline, the taxpayer returns the signed e-filing authorization but instructs the member to remove Form 8275 before filing. May the member electronically file the return without Form 8275?

Answer: No. The member may not electronically file the return without Form 8275, the specified disclosure form.

B. SSTS-2 ANSWERS TO QUESTIONS ON RETURNS

SSTS-2 outlines when a CPA may sign a client's tax return as a paid preparer when one or more questions on the return have been left blank. The term "questions" means "requests for information on the return, in the instructions, or in the regulations whether or not stated in the form of a question."

SSTS-2

A preparer should make a reasonable effort to obtain from the client, and provide, appropriate answers to all questions on a tax return before signing as a preparer.

Questions on tax returns are not of uniform importance and often are not applicable to a particular taxpayer. A preparer must make a reasonable effort to obtain all of the requested information. The AICPA gives three reasons for the CPA to want to comply:

a) "The question may be of importance in determining taxable income or loss, or the tax liability shown on the return."

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

c) "The CPA must sign the preparer's declaration stating that the return is true, correct and complete."

Nevertheless, reasonable grounds may exist for omitting an answer. The AICPA gives several examples of when a question may be omitted:

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

b) "Genuine uncertainty exists regarding the meaning of the question in relation to the particular return."

c) "The answer to the question is voluminous; in such cases, assurance should be given on the return that the data will be supplied upon examination."

When reasonable grounds exist for omitting an answer, the CPA is not required to state on the return the reason for the omission. However, the CPA must "consider whether the omission may cause the return to be deemed incomplete or result in penalties."

The mere fact that an answer to a question may be detrimental to the client (e.g. triggering an audit) does not justify omitting an answer.

C. SSTS-3 CERTAIN PROCEDURAL ASPECTS OF PREPARING RETURNS

SSTS-3 outlines the "responsibility of the preparer to examine or verify certain supporting data or to consider information related to another client when preparing a client's tax return." In other words, does the information pass the CPA reasonableness test?

SSTS-3

I. In preparing or signing a return, the CPA may in good faith rely without verification upon information furnished by the client or by third parties. However, the CPA should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to the CPA. In this connection, the CPA should refer to the client's returns for prior years whenever feasible.

II. Where the Internal Revenue Code or income tax regulations impose a condition with respect to deductibility or other tax treatment of an item (such as taxpayer maintenance of books and records or substantiating documentation to support the reported deduction or tax treatment), the CPA should make appropriate inquiries to determine to his or her satisfaction whether such condition has been met.

III. The individual CPA who is required to sign the return should consider information actually known to that CPA from the tax return of another client when preparing a tax return if the information is relevant to that tax return, its consideration is necessary to properly prepare that tax return, and use of such information does not violate any law or rule relating to confidentiality.

The paid preparer must sign the declaration on the tax return that the information therein is true, correct and complete "based on all information of which the preparer has any knowledge". This applies to information supplied by third parties to the CPA. The preparer is not required to examine or verify supporting data. A preparer may rely on client supplied data unless it appears to be incomplete, incorrect or inconsistent.

The AICPA explanation states “the CPA should encourage the client to provide supporting data where appropriate”. This allows the CPA to consider all of the relevant data when looking for additional deductions. It also allows the CPA to “tie out” information to 1099 Series information returns and avoid bothersome IRS notices in the future.

When reviewing K-1s from pass-through entities the CPA may advise the client to further investigate his dealings with the pass-through entity. However, “the CPA may accept the information provided by the pass-through entity without further inquiry unless there is reason to believe it is incorrect, incomplete, or inconsistent…”.

The AICPA recommends that CPAs make good use of prior year tax returns. By analyzing the client’s current tax situation with that reported on prior year returns, the CPA can avoid the omission or duplication of items. Reviewing prior year returns also aids in reporting similar items on a consistent basis.

From a practical standpoint this comparison is very easy. Most tax preparation programs print multi-year comparisons of tax return line items. Utilizing such a feature will not only aid your compliance with the ethical standards but will help you identify “missed deductions.”

D. SSTS-4 USE OF ESTIMATES

SSTS-4 details when and under what circumstances client estimates may be used in preparing tax returns. “The CPA may advise on estimates used in the preparation of a tax return, but responsibility for estimated data is that of the client”. The client should provide the estimated data. Appraisals are not considered estimates.

SSTS-4

A CPA may prepare tax returns using the taxpayer’s estimates if it is impracticable to obtain exact data, and the estimated amounts are reasonable under the facts and circumstances known to the CPA. When the taxpayer’s estimates are used, they should be presented in such a manner as to avoid the implication of greater accuracy than exists.

Accounting requires the exercise of judgment and at times the use of approximations based on judgment. The exercise of such judgment is not considered an “estimate” for purposes of this statement. The AICPA cites, for example, year-end income and expense accruals as judgment items, not estimates.

When it is necessary to use estimates, the “estimated amounts should not be presented in a manner that provides a misleading impression as to the degree of factual accuracy.” This can be illustrated by the client who estimated his business auto mileage as 30,000 miles but says use 29,958 miles so that “it looks more accurate.”

The AICPA points out that disclosing that an estimate was used in a return is usually not required. However, there are unusual circumstances where such disclosure is needed to avoid misleading the IRS regarding the degree of accuracy of the return.

Some examples of unusual circumstances include the following:

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

b) The taxpayer has not received a K-1 for a flow-through entity at the time the tax return is to be filed. Consider filing Form 8082.

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

d) Fire, computer failure, or natural disaster has destroyed the relevant records.

E. SSTS-5 DEPARTURE FROM A POSITION PREVIOUSLY CONCLUDED IN AN ADMINISTRATIVE PROCEEDING OR COURT DECISION

When may a CPA recommend a tax return position that departs from a court decision or IRS ruling?

SSTS-5 provides surprising guidance. Remember, SSTS-1 provides that a CPA's primary duty is to his client.

SSTS-5

The position to be taken concerning the tax treatment of an item in the preparation or signing of a tax return should be based upon the facts and the law as they are evaluated at the time the return is prepared or signed by the CPA. Unless the taxpayer is bound to a specified treatment in the later year, such as by a formal closing agreement, the treatment of an item as part of concluding an administrative proceeding or as part of a court decision does not restrict the CPA from recommending a different tax treatment in a later year's return. Therefore, if the CPA follows the standards in SSTS-1, the CPA may recommend a tax return position, prepare, or sign a tax return that departs from the treatment of an item as concluded in an administrative proceeding or a court decision with respect to a prior return of the taxpayer.

The IRS as well as most CPAs strive for consistency in the treatment of similar items in different years. SSTS-5 notes that there are many valid reasons why a CPA could recommend a position that differs from that agreed to in prior years with the IRS. Perhaps the taxpayer lacked the required documentation to substantiate a deduction in the prior year. The taxpayer may have simply given in to IRS upon audit to avoid the time and expense of litigation. Also, more favorable court cases or administrative rulings may have occurred. However, the AICPA warns:

The consent in an earlier administrative proceeding and the existence of an unfavorable court decision are factors that the CPA should consider in evaluating whether the standards in SSTS-1 are met.

F. SSTS-6 KNOWLEDGE OF ERROR: RETURN PREPARATION AND ADMINISTRATIVE PROCEEDINGS

SSTS-6 considers the applicable standards for a CPA who becomes aware of:

a) An error in a taxpayer's previously filed tax return;

b) An error in a return that is under audit; or

c) A taxpayer's failure to file a required tax return.

An error includes anything that would fail to meet the standards of SSTS-1. An error also includes a

position taken on a prior year's tax return that no longer meets SSTS-1 due to changes in legislation, judicial decisions or regulations. An error does not include immaterial items. SSTS-6 applies to errors on returns prepared by other preparers.

SSTS-6

The CPA should inform the client promptly upon becoming aware of an error in a previously filed return or upon becoming aware of client's failure to file a required return. The CPA should recommend the corrective measures to be taken. Such recommendation may be given orally. The CPA is not obligated to inform the Internal Revenue Service, and the CPA may not do so without the client's permission, except where required by law.

If the CPA is requested to prepare the current year's return and the client has not taken appropriate action to correct an error in the prior year's return, the CPA should consider whether to withdraw from preparing the return and whether to continue a professional relationship with the client. If the CPA does prepare such current year's return, the CPA should take reasonable steps to ensure that the error is not repeated.

When the CPA discovers an error in a prior return, the AICPA advises that:

a) The CPA should advise the client of the error and the measures to be taken. It is the client's responsibility to decide whether to correct the error.

b) In cases where the IRS could assert the charge of fraud, the CPA should advise the client to consult legal counsel.

c) The CPA should take reasonable steps to ensure that the error is not repeated.

d) If the tax return is under audit, the CPA should ask for permission to disclose the error.

e) If the CPA believes that fraud has occurred, the CPA should advise the taxpayer to consult with an attorney before taking any action.

The author believes that great care should be taken with clients who refuse to correct errors or particularly to file required returns. The simple reason is that if they are content with cheating the government, what will keep them from cheating you? Do yourself a favor and consider withdrawing from the engagement.

Frequently Asked Questions

Question: SSTS No. 6 indicates, "*However, an error does not include an item that has an insignificant effect on the taxpayer's tax liability.*" What process should a member use in determining if the error on the tax return is insignificant?

Answer: The member should exercise professional judgment including the following in determining if the error has an insignificant effect on the taxpayer's tax liability:

- The amount of the item affected by the error in comparison with the amount of other items on the return.

- The effect on taxable income and tax liability.
- The effect of the item on prior and future returns. The nature of the item and possible adverse consequences that result from the nature of the item (e.g., interest from a foreign bank account).

Note that Circular 230, §10.21 does not contain an exception for an item with an insignificant effect on the taxpayer's tax liability.

Question: A member is representing a taxpayer during a federal tax examination. The IRS has issued an information document request (IDR) for supporting information on certain deductions claimed on the return under examination. In the process of assembling the information to respond to the IDR, the member has determined a deduction claimed on the return was overstated. What should a member do when the member determines a taxpayer's overstated deduction is insignificant versus significant?

Answer: A. The member has determined the overstated deduction would have an "insignificant" effect on the taxpayer's tax liability. What should the member do?

SSTS No. 6 is not applicable to an item that has an insignificant effect on the taxpayer's tax liability. Circular 230, §10.21 does not contain an exception for an insignificant effect. Thus Circular 230, § 10.21 requires the practitioner to advise the client of the facts and consequences of the error.

B. The member has determined the overstated deduction would have a "significant" effect on the taxpayer's tax liability. What process should the member follow in determining what to do?

Both SSTS No. 6 and Circular 230, §10.21 require the member to inform the taxpayer of the error and the consequences of such error. SSTS No. 6 indicates such advice may be given orally. Although SSTS No. 7 indicates that oral advice may serve a taxpayer's needs appropriately in routine matters or in well-defined areas, written communications are recommended in important, unusual, substantial dollar value, or complicated transactions. The member should use professional judgment about the need to document oral advice. The member should also consider the provisions of Circular 230, §10.33. For example, in evaluating how the advice should be communicated and documented, the member should consider the client's understanding of the form and scope of the advice or assistance to be rendered and the need to establish relevant facts and the applicable law which support the member's conclusions. Additional guidance on a member's course of action and thought process are indicated in question C below.

C. The member has determined the overstated deduction would have a "significant" effect on the taxpayer's tax liability. The taxpayer will not allow the member to disclose the overstated deduction to the taxing authority examiner. What should the member do?

It is the taxpayer's responsibility to decide whether to correct or disclose an error. If the taxpayer does not correct or disclose an error, the member should consider whether to withdraw from the engagement and whether to continue a professional or employment relationship with the taxpayer. The member's decision on representing the taxpayer should be based on professional judgment, the facts and circumstances, and other applicable standards. The member should specifically consider Paragraph 10 of SSTS No. 6

regarding the potential adverse effect of withdrawal. The member should consider consulting with legal counsel regarding the issue of withdrawal.

There are several standards established in Circular 230 that may be relevant. Consider the member's responsibility under §10.34(b)(iii) regarding submission of a document that contains information that may be considered an intentional disregard of a rule or regulation. The member also has responsibility under §10.34(c) to inform the client regarding potential penalties that may apply and the possible opportunity to avoid such penalties by disclosure of the error. Circular 230, §10.51(a) defines incompetence and disreputable conduct for which a practitioner may be sanctioned. Under this subsection, various examples of such conduct are listed including paragraph (4): "Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof…" .

Question: A member is assisting a taxpayer to prepare his federal income tax return. The taxpayer started a business which has lost money for several preceding years and has a net operating loss carry forward (NOL). The current year shows a small amount of profit.

While reviewing the taxpayer's prior year federal return, the member notices the taxpayer has erroneously expensed some loan costs that should have been amortized. Correcting the error would reduce the amount of the NOL, but the taxpayer would still be in a position with no net tax effect.

When the member informed the taxpayer of the error, the taxpayer said he did not want to amend the previous year's return because it would have no tax impact for that year. How should the member prepare the current year's return with respect to the loan costs previously expensed?

Answer: In these circumstances, the member may decide that it is appropriate to continue the current engagement. In that case, the member's professional obligation is to prepare a correct return for the current year. It may be incorrect to continue currently deducting the loan costs. (Consider whether the deductions would be regarded as a "method of accounting," and if so, whether pursuant to Treas. Reg. § 1.446-1(e)(2)(i) the taxpayer is required to request and secure consent from the IRS before changing a method of accounting.)

If the taxpayer is not required to obtain the IRS's consent to make the change, the current year return should be prepared as if the returns for the prior years had reflected the correct deductions.

G. SSTS-7 FORM AND CONTENT OF ADVICE TO CLIENTS

SSTS-7 details "standards concerning certain aspects of providing tax advice to a client and considers the circumstances when subsequent developments affect advice previously provided."

SSTS-7

In providing tax advice to a client, the CPA should use professional judgment to ensure that the advice given reflects competence and appropriately serves the client's needs. The CPA is not required to follow a standard format or guidelines in communicating written or oral advice to a client, but must comply with Circular 230 standards.

In advising or consulting with a client on tax matters, the CPA should assume that the advice will affect the manner in which the matters or transactions considered ultimately will be reported or disclosed on the client's tax return. Thus, for all tax advice the CPA gives to a client, the CPA should follow the standards in SSTS-1 relating to tax return positions. The CPA should also consider disclosure standards and potential penalty consequences.

A CPA has no obligation to communicate with a taxpayer when subsequent developments affect advice previously provided with respect to significant matters, except while assisting a taxpayer in implementing procedures or plans associated with the advice provided or when a member undertakes this obligation by specific agreement.

Because the range of services and advice is so extensive, no uniform set of guidelines or format can be established. Written advice is generally better than oral advice. However, the CPA should use prudent judgment and common sense in deciding how to communicate advice.

Frequently Asked Questions

Question: A member had a tax planning meeting with a taxpayer. The taxpayer indicated that he recently sold depreciable real property and would like the member to review the transaction and provide written advice on the potential tax consequences. The taxpayer does not believe he should have a tax issue since the sales price is very close to the acquisition cost.

The member knows the property has been depreciated yearly, the client has a low basis in the property sold due to depreciation claimed on previous income tax returns, and there are other considerations including the taxpayer's other income, alternative minimum tax, and state and local tax that could impact the amount of tax due by the taxpayer.

What form and content should the member use to communicate the potential tax consequences of the property sale when written advice is requested by the taxpayer?

Answer: The taxpayer appears not to understand the relationship between depreciation expense claimed on previous years' tax returns and the gain computation at the time of the sale. The member may consider providing the taxpayer with an oral explanation during their conversation so that the taxpayer is not surprised by the results or overlooks it when the written advice is provided.

There is no required format for tax advice under SSTS No. 7 or Circular 230. Paragraph 7 of SSTS No. 7 provides factors to be considered when deciding on the format. One such factor is "the tax sophistication of the taxpayer." Because it seems that the taxpayer does not understand the tax issues associated with the transaction, the written advice should provide a sufficient explanation so that someone without tax sophistication can understand how the tax law applies to him or her.

With respect to content, the member should exercise professional judgment and consider the following issues associated with the sale:

- Taxpayer's other income
- Explanation of depreciation rules and adjusted basis of the property sold

- State and local tax issues
- Possible alternative minimum and net investment income taxes, passive losses and carryovers, and other carryover items
- Possible alternatives, if any (e.g., a tax-free exchange)
- Possible federal, state, and local penalty provisions
- Other relevant issues depending on the taxpayer's tax situation and financial sophistication
- Other considerations for issues addressed in SSTSs No. 1-6.

Paragraph 3 of SSTS No. 7 provides that, when providing tax advice, a member should assume that the tax advice will affect the manner in which the matter is reported or disclosed on the taxpayer's return, and the member should therefore consider the potential penalty consequences of the issues on which the advice is provided. Accordingly, the member should consider including information on potential penalties that could be associated with the transaction.

Additional information that should be considered include:

- The advice reflects professional judgment based on the member's understanding of the facts and the law existing as of the date the advice is rendered.
- Subsequent developments could affect previously rendered professional advice.

The member has no obligation to communicate subsequent developments that could affect previously rendered professional advice unless by specific agreement.

Question: What form and content should the member use to communicate the potential tax consequences of the property sale when written advice is not requested by the taxpayer?

Answer: The member should explain the gain to be reported for tax purposes and other tax implications of the sale which the taxpayer may not have anticipated. The member may counsel the taxpayer that the taxpayer would benefit from written tax advice (which would further clarify the tax implications of the sale).

Where the taxpayer only requests oral advice, it is recommended that the member contemporaneously document the advice in written form in the taxpayer's file.

Question: A taxpayer has invested a substantial amount of money in the rehabilitation of a building with the intention of qualifying for rehabilitation and other available tax credits. The taxpayer is also interested in maximizing depreciation deductions. The taxpayer has engaged a member to prepare the applicable returns reflecting these items. The member has determined that outside professional advice will be needed to determine depreciation lives of the building components and the tax benefits of the expenditures.

What steps should the member take to communicate the need for outside expertise?

Answer: The member should communicate to the taxpayer that the member does not have the experience and expertise to determine the information necessary to prepare the returns, and the member recommends additional professional advice will be needed.

Question: How should the member evaluate and document the outside professional advice received?

The member should evaluate the advice from the outside professional advisor using professional judgment. Reg. Sec. 1.6694-2(e)(5) provides factors to consider when relying on the advice of others, including whether the advice was reasonable on its face value and the qualifications of the outside advisor. The member should also review Circular 230, §10.22(b) and applicable reporting and disclosure standards in the Internal Revenue Code and Regulations and the jurisdictions where the returns will be filed.

II. IRS SANCTIONS

The Internal Revenue Code and Regulations contain a number of provisions that impose criminal, civil, and regulatory sanctions on tax practitioners.

Of the approximately 150 penalty provisions a CPA could run afoul of, one of the most relevant is Section 6694. Section 6694 provides for a penalty of the greater of $1,000 or 50% of the income derived from the return against the preparer for each return involving an understatement of tax liability due to a position taken on a return for which there is not a realistic possibility of being sustained on its merits ($5,000 or 75% if the understatement was caused by the preparer's willful or reckless conduct). This penalty does not apply if the preparer acted in good faith. For a discussion of what constitutes "good faith", see Rev. Proc. 80-40. Better yet – follow the advice in this course.

CHAPTER 2: TEST YOUR KNOWLEDGE

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

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

1.	**SSTS-2 provides examples of reasonable grounds for omitting an answer on a client's tax return. Which of the following is <u>not</u> one of the examples:** **A.** the information is not readily available and the answer is not significant in terms of taxable income or loss, or the tax liability shown on the return **B.** genuine uncertainty exists regarding the meaning of the question in relation to the particular return **C.** the answer to the question may be detrimental to the client **D.** the answer to the question is voluminous
2.	**All of the following are correct regarding SSTS-6 <u>except</u>:** **A.** an error includes anything that would fail to meet the standards of SSTS-1 **B.** an error includes immaterial items **C.** SSTS-6 applies to errors on returns prepared by other preparers **D.** the CPA should recommend corrective measures to be taken upon becoming aware of a client's failure to file a required return

CHAPTER 2: SOLUTIONS AND SUGGESTED RESPONSES

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

1.	**A.** Incorrect. A question may be omitted when the information is not readily available and the answer is not significant in terms of taxable income or loss, or the tax liability shown on the return. **B.** Incorrect. In a situation in which genuine uncertainty exists regarding the meaning of the question in relation to the particular return, a question may be omitted. **C.** **CORRECT**. The AICPA does not consider a situation in which an answer to a question may be detrimental to the client as an acceptable instance to omit a question. **D.** Incorrect. A preparer may omit a question when the answer to the question is voluminous. In such cases, assurance should be given on the return that the data will be supplied upon examination. *(See page 42 of the course material.)*
2.	**A.** Incorrect. Anything that would fail to meet the standards of SSTS-1 would be considered an error for the purposes of SSTS-6. **B.** **CORRECT**. SSTS-6 does not consider immaterial items to be errors. **C.** Incorrect. SSTS-6 does apply to errors on returns prepared by other preparers. **D.** Incorrect. Under SSTS-6, a CPA should recommend corrective measures to be taken upon becoming aware of a client's failure to file a required return. *(See pages 45 to 46 of the course material.)*

GLOSSARY

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

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

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

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

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

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

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

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

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

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IRS CIRCULAR 230 (COURSE #9015H) – FINAL EXAM COPY

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

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

   A. advise the client promptly of the fact of noncompliance

   B. notify the IRS of this failure

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

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

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

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

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

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

   D. contingent fees are never allowed

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

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

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

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

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

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

   A. it places the first layer of responsibility on the individual as part of a "self-regulatory" environment

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

   C. the provision is ineffective

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

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

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

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

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

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

6. **Which of the following is <u>not</u> a component of the Taxpayer Bill of Rights:**

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

   B. the right to privacy

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

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

7. **SSTS-1 is referred to as which of the following:**

   A. Realistic Possibility Standard

   B. Responsibility of the Preparer Standard

   C. Reasonable Estimates Standard

   D. Reasonable Advice Standard

8. **Assume the same facts as Question 3 on the previous page. What action should you take according to SSTS-1:**

   A. notify the IRS immediately

   B. sign the return since SSTS-1 states your primary duty is to your client

   C. not sign the return unless the client agrees not to claim the frivolous deduction

   D. sign the return and recommend that the client file an amended return after tax season

9. **SSTS No. 4 provides guidance on the use of estimates. Which of the following is the most correct use of an estimate under SSTS-4:**

   A. a client does not keep a car mileage log but believes he drove about 20,000 miles last year and that about half of the mileage is business related. He asks his CPA to report 10,086 miles as business miles so that the estimate looks more like an accurate record of the actual mileage

   B. an accrual basis taxpayer calculates accrued expenses totaling $4,280

   C. a charitable donation is supported by an appraisal which states the value of the donated items as $5,840

   D. a taxpayer held an interest-bearing account at a bank for a few months at the beginning of the year but received less than $10 of interest and did not receive a Form 1099. The taxpayer estimates based on the time period, amount in the account, and the interest rate earned that he should have received $8 in interest

10. Section 6694 Title 26 of the U.S. Code allows for which of the following penalties against a preparer for each return involving an understatement of tax liability which was caused by the preparer's willful or reckless conduct:

A. a maximum fine of $1,000

B. a maximum fine of $2,500

C. a penalty of the greater of $5,000 or 75% of the income derived from the return

D. a penalty of the greater of $10,000 or 100% of the income derived from the return