



Circular 230

How we conduct our business!



Circular 230, Federal Code of
Regulations – Subpart B –
Duties and Restrictions
Relating to Practice Before the
Internal Revenue Service.



To Whom Does Circular 230 Apply?

- ◆ Individuals who represent taxpayers before the Internal Revenue Service
- ◆ CPA's
- ◆ Enrolled Agent's
- ◆ Attorney's
- ◆ Others
- ◆ Taxpayer
 - Representation often begins with the preparation of the tax return
- ◆ IRS correspondence
- ◆ Notices
- ◆ Examination



Section 10.20 Information to be furnished (to the Internal Revenue Service).

What do you do when the IRS wants your clients records?

What if you don't have the requested records?



Section 10.21 Knowledge of clients omission.

What do you do when you know the client has not complied with the revenue laws of the United States or has made an error in or omission from any return?



Section 10.22 Diligence as to accuracy.

A practitioner must exercise due diligence in:

- a. Preparing documents
- b. Determining correctness of oral or written representation to the IRS
- c. Determining correctness of oral or written representations to any matter administered by the IRS



Section 10.23 Prompt
disposition of pending matters.

How many ways can you spell
DELAY?



Section 10.27 Fees.

A practitioner may not charge an unconscionable fee.

Contingent Fees

Original return – NO

Amended return – YES

Claim for refund - YES



Section 10.28 Returning clients records.

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.



Section 10.29 Conflicting Interest

What is a “conflict of interest”?

You can represent a taxpayer if:

- You provide competent and diligent representation to each client.
- The representation is not prohibited by law.
- Each affected client gives informed consent, confirmed in writing.



Case

Taxpayer and spouse are clients of many years. He owns a bookkeeping firm, she is the bookkeeper. You prepare the tax return for them.

IRS audits and finds \$20,000 of unreported income. He believes wife is at fault as he has discovered another bank account for \$20,000 only in her name.

Before he comes to see you, wife calls, tells same story about audit but that husband knew of the understatement and told her it was only \$5,000. She wants you to represent her in an innocent spouse claim against her soon to be ex-husband.

Your options are?

What should you do?



Section 10.34 Standards for
advising with respect to tax
return positions and for preparing
or signing returns.

Realistic possibility standard

vs.

Reasonable belief (New)



Section 10.34 continued.

A practitioner may not sign a return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous and is adequately disclosed to the Internal Revenue Service.



Reasonable belief (New)

The “realistic possibility standard”, being able to sustain a position on a tax return 1 out of 3 challenges, has now been replaced with a “reasonable belief” standard, that the tax treatment of the position is more likely than not the proper tax treatment.



Section 10.34 continued.

The practitioner also must inform the client of any opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure. This paragraph (b) applies even if the practitioner is not subject to a penalty with respect to the position.



Section 10.34 continued.

c) Relying on information furnished by clients.

A practitioner advising a client to take a position on a return, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client.



Section 10.34 continued.

However, the practitioner may not ignore the implication of the 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.



Case

Taxpayer comes to see you late August for “tax planning”. It is reported by the accountant of a related 1120S that there will be approximately \$50,000 in income to your taxpayer for the current year. Your taxpayer is in the 35% tax bracket.

When you meet with the accountant for the Corporation and tell him the issue, he/she remarks that perhaps something can be done, some adjustments made, to lesson the tax impact.

In February, your client comes in with a K-1 from the Corporation reporting a \$25,000 loss.

What are your concerns?

What do you do?

What provision of C230 governs your actions?



Section 10.50 Sanctions.

- Censure
- Suspension
- Disbarment

2007 Small Business & Work Opportunity Tax Act



- New definition of “income tax return preparer
- Increase in Section 6694(a) penalty
- New penalty – 20% - Erroneous claims for refund



Transitional Guidance

IRS Notice 2007-54 (2007-27 IRB)

- Disclosure deemed adequate if Form 8275 or Form 8275-R (Regulation Disclosure Statement) attached to return, amended return or claim or pursuant to the annual revenue procedure authorized.
- No transitional relief for return preparers who exhibit willful or reckless conduct.

Preparer Penalties - Summary

Conduct Description	Code Section	Amount	Protection from the Section 6694 Penalties
a) Understatement due to position.....	6694(a)	\$1,000*	1. Reasonable belief more likely than not the proper tax treatment
b) Understatement due to willful understatement of tax or reckless or intentional disregard of rules or regulations.....	6694(b)	\$5,000*	2. Adequate disclosure 3. Reasonable cause 4. Had no reason to know
c) Aiding and abetting understatement of tax liability.....	6701	\$10,000	
d) Copy of return, failure to furnish.....	6695(a)	\$ 50	
e) Improper disclosure or use of information.....	7216	\$1,000 or jail	



Preparer Penalties – cont.

Conduct Description	Code Section	Amount
f) Sign return, failure to....	6695(b)	\$ 50
g) Identifying number, failure to furnish.....	6695(c)	\$ 50
h) List or copies of returns failure to retain.....	6694(d)	\$ 50
i) List of employee preparers, failure to retain.....	6695(e)	\$ 50
j) Negotiation of refund check.....	6695(f)	\$ 500
NEW – Erroneous Claim for refund.....	6694	20% disallowed





Circular 230

The American Jobs Creation Act of 2004 confirmed the authority of treasury to regulate written advise in potentially abusive transactions.

\$\$\$\$\$\$\$\$ Monetary Penalties \$\$\$\$\$\$\$\$

10 Important Professional Traits

The following professional traits require self-assessment:

1. **Honesty and integrity.** Speak for themselves.
2. **Know the business.** Knowledge is what you sell.
3. **Knowledge of technical information.** Keeps attending seminars.
4. **Full-time on the job.** Consumers don't hire part-time doctors.





- 5. Pays attention to details.** Clients trust professionals to watch out for their interests.
- 6. References.** Have them.
- 7. Years in business.** Quality experience is more important.
- 8. Self-promotion.** Able to tell prospective clients what makes you stand out from the crowd.
- 9. Works with licensed professionals.** Will recommend only reputable colleagues.
- 10. Gives service with due diligence.** Mistakes are costly in the long run.



NSTP

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