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# Professional Tax Practice Responsibilities

## A Circular 230 Case Study

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# Hypothetical

- Clients H & W - new
- You have communicated only with H who is an orthodontist
- Single-member prof. LLC, elects Sched C
- H spreads services among 3 different locations weekly
- W - second wife with a one year old son, stay-at-home Mom
- H- naturalized citizen from Guatemala – parents and siblings still in that country



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# Hypo (cont)

- You are asked to prepare a joint personal tax return for H&W
- Bookkeeper for LLC– 3 days/wk; deposits, vendor payments, bank recs, QuickBooks for financial statements
- You – techie – electronic organizers, upload F/S and personal data from bookkeeper and client





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# Hypo (cont)

- Will you/should you meet with H&W in person?
- Will you/should you ask for child's SSN and birth certificate?
- Will you prepare MFJ w/o question?
- Any other preliminary Q's





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# Hypo (cont)

- LLC P&L
  - Gross income -- \$950,000
  - Expenses
    - Auto lease (BMW) - \$12,000
    - Staff wages - \$150,000
    - Outside services - \$120,000
    - Payroll taxes accrued - \$40,000
    - T&E - \$52,500
    - Supplies - \$12,000
    - Rent – \$120,000





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## Hypo (cont)

- Can you accept the bookkeeper's financial statements without verification? Should you?
- Any follow-up Q's for H?





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# Hypo (cont)

- Client Organizer Responses:
  - Foreign bank account – “no”
  - Alimony paid - \$120,000
  - Home Office – “yes”
- Can you accept H’s organizer without question?





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# Hypo (cont)

- What if:





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# Hypo (cont)

- T&E includes auto costs from home and between the three office locations;
- P/R accrual = withholding for employees; not paid over yet;
- Owns a home in Guatemala near his parents- stays there when he visits 4-5 times a year. Otherwise, rents daily/weekly/monthly to tourists;



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## Hypo (cont)

- Contentious dispute with his ex-wife about child custody – she won; he pays \$10,000/mo in child support;
- Pays himself rent for the storage space used in his home for patient records;
- Some of T&E is for theater/concert/sports tickets;
- H says prior preparer “let” him deduct all of this.



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# Hypo (cont)

- Questions, now?
- Issues?
- Are we going to “let” H deduct “all of this”?





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## Hypo (cont)

- H sends \$2000 a month to his sister in Guatemala to support her and her two children. Sister is a non-working, single mother-Guatemalan citizen
- H&W's prior years' returns reflect six dependents





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# Hypo (cont)

- Now what?





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# Hypo (cont)

- You prepare a draft joint tax return correcting for the items discussed during your review of the financial data.
- Result will be a much larger tax liability than H expected.
- H tells you he cannot pay it all at once.





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# Hypo (cont)

- What advice do you give H on April 15th?





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# Hypo (cont)

- What advice do you give H on October 15th when he still cannot full pay?
- What duty do you owe W?





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# Hypo (cont)

- There's more!





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# Hypo (cont)

- In August, H brings you an Audit Notice for a C-corp March 15, 2011 tax return
- IDR requests:
  - Supporting documentation for: start-up expenses, R&D credit, officer compensation and office expense;
  - Copies of the 2010 and 2012 year returns for the corp;
  - The current and prior year returns for H&W



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# Hypo (cont)

- H discloses: Year before last- H invented a new technique in orthodontia on which he expended \$300,000 for R&D, patent lawyers and lab assistants.
- The technique has been enormously successful – H receives royalties through the separate C corporation he established for this inventing activity.
- Royalties for tax year = \$500,000



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# Hypo (cont)

- Previous preparer deducted all C corp start-up expenses and claimed R&D credit for a large portion of the other costs in year one.
- In year two, previous preparer claimed additional R&D credit
- H has no clear documentation for any R&D activity but “could reconstruct”



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# Hypo (cont)

- What now?





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# Hypo (cont)

- H&W have had a falling out about a separate property agreement he asked her to sign;
- W got really angry and has left him (with their son) and is back living with her parents;
- He’s “pretty sure” they’ll be able to work things out; but it has been an additional distraction for him.



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# Hypo (cont)

- Who can/should you represent in the corporate audit?
- What about H & W's joint return (still on extension)?





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# Bonus Question

- W (still with parents) hires her own preparer who asks you for prior year's tax returns and current year's documentation in order to determine W's filing obligation and prepare her return, if needed.
- Can you give W's preparer the organizer and other information, including H's disclosures?



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# More Info?

- Office of Professional Responsibility  
1111 Constitution Ave. N.W.  
SE:OPR Rm. 7238  
Washington, D.C. 20224
- Information on OPR, Circular 230 and Discipline visit:  
<http://www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals>





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# APPENDIX





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# The Law

- 31 U.S.C. §330 (1884)
- 31 C.F.R. Part 10 (cir. 1886)
- Treasury Circular No. 230 (1921)
- Online at [www.irs.gov/pub/irs-pdf/pcir230.pdf](http://www.irs.gov/pub/irs-pdf/pcir230.pdf)





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# Diligence as to Accuracy (10.22)

- Must exercise Due Diligence in:
  - Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters.
  - Determining correctness of oral/written representations made to the client or to Treasury personnel.
- Reliance on Another's Work Product? With Reasonable Care.
- Know Your Client.



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# Standards for Tax Returns

## Section 10.34(a)

- May not sign a tax return or advise a position on a tax return, willfully, recklessly, or through gross incompetence if:
  - Lacks reasonable basis
  - Unreasonable position (6694(a)(2))
  - Willful attempt to understate liability (6694(b)(2)(A))
  - Reckless, intentional disregard of rules and regulations (6694(b)(2)(B))
- Patterns matter



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# Standards for Documents and Other Papers- 10.34(b)

- May not advise taking Positions that are Frivolous.
- May not advise Submissions:
  - to delay or impede tax administration
  - that are frivolous
  - Containing or omitting information that demonstrates an intentional disregard of rules or regulations.



# Penalties and Client Reliance- 10.34(c), (d)

- Must Advise Client of Potential Penalties and their Avoidance through Disclosure (10.34(c))
- Reliance on Client Information in good faith, without verification, is OK, but...
  - Cannot ignore implications of other information furnished
  - Cannot ignore actual knowledge
  - Must make reasonable inquiries for incorrect, inconsistent information (10.34(d))
- No Willful Blindness.
- No “Don’t ask, don’t tell”.

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# Conflicting Interests-10.29

- One client interest directly adverse to another
- Significant risk of material limitation
  - By Responsibilities to
    - Another client,
    - Former client,
    - Third person
  - **OR PERSONAL INTEREST OF THE PRACTITIONER**





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# Conflicts (cont.)

- May represent if:
  - Reasonable belief in ability to provide competent, diligent representation to each affected client
  - Not legally prohibited
  - EACH affected client waives conflict, gives **INFORMED** consent – in writing at the time conflict is known



# Giving False or Misleading Info (10.51(a)(4))

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- No participating in any way in giving false/misleading info to the Dept. of Treasury or any officer/employee thereof
- Includes:
  - Testimony
  - Federal tax returns
  - Financial statements
  - Applications
  - Affidavits, declarations, and any other document or statement, written or oral



# Willfully Assisting an Illegal Plan to Evade Taxes or Payment (10.51(a)(7))

- Willfully assisting, counseling, encouraging, suggesting to a client/prospective client:
  - An illegal plan to evade Federal taxes or payment thereof
  - Violation of any Federal tax law

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# False Opinions 10.51(a)(13)

- Knowingly, recklessly or through gross incompetence
  - Intentionally or recklessly misleading
  - Pattern of incompetent opinions
  - Concealing matters required to be revealed
- Reckless:
  - Highly unreasonable omission
  - Extreme departure from standard of care
  - Patterns matter
- Gross Incompetence:
  - Grossly Indifferent Conduct, Inadequate Preparation
  - Consistent Failure Re: Obligations to Client



- **1.2.52.15 (07-16-2012) Delegation Order 25-16**

- **Authority of the Office of Professional Responsibility to Perform Certain Functions Concerning Practice before the Internal Revenue Service**
- **Authority:** To exercise responsibility for all matters related to practitioner conduct, discipline and practice before the Internal Revenue Service (IRS) under 31 CFR part 10 (Circular 230), unless otherwise delegated.

This authority includes but is not limited to:

- Receiving and processing referrals regarding allegations of misconduct under Circular 230; initiating all disciplinary proceedings against individuals or entities relating to allegations or findings of practitioner misconduct consistent with the applicable disciplinary rules under Circular 230;
- Making final determinations on appeal from return preparer eligibility or suitability decisions; imposing and releasing expedited practitioner suspensions; recommending and imposing all sanctions for violations under Circular 230 and accepting consents to be sanctioned under the same;
- Making determinations on whether to appeal Administrative Law Judge decisions and orders in Circular 230 proceedings; issuing special orders as proper and necessary under Circular 230 and reviewing and determining petitions seeking reinstatement to practice.

**Note:**

- This authority does not include the authority to redetermine or collect a practitioner's tax liability.
- **Delegated To:** Director, Office of Professional Responsibility.
- **Redelegation:** This authority may be redelegated to IRS Office of Professional Responsibility employees.
- **Sources of Authority:** 31 USC 330; 31 CFR part 10.
- To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified.
- **Signed:** Douglas H. Shulman, Commissioner, Internal Revenue

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# OPR Guidance

- Rights and Responsibilities of practitioners in Disciplinary Cases: <http://www.irs.gov/pub/irs-utl/rightsandresponsibilitiesofpractitioners.pdf>
- Guidance on Restrictions During Suspension or Disbarment: [http://www.irs.gov/pub/irs-utl/guidance\\_on\\_restrictions\\_during\\_suspension\\_or\\_disbarment.pdf](http://www.irs.gov/pub/irs-utl/guidance_on_restrictions_during_suspension_or_disbarment.pdf)
- Information (resources) for Tax Professionals: <http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Information-for-Tax-Professionals>





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# OPR Guidance (cont)

- Circular 230 Webinar- Soup to Nuts:  
<http://www.irsvideos.gov/Circular230OverviewWebinar/>
- FBAR Responsibility:  
[http://www.irs.gov/pub/irs-utl/fbar\\_document\\_on\\_irs\\_gov\\_ver\\_08-04-10.pdf](http://www.irs.gov/pub/irs-utl/fbar_document_on_irs_gov_ver_08-04-10.pdf)





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# Relevant Recent OPR Cases

- Tewolde: <http://www.irs.gov/uac/Newsroom/IRS-Office-of-Professional-Responsibility-Disbars-Return-Preparer-Accused-of-Filing-False>Returns>
- Bryson: [http://www.irs.gov/pub/irs-utl/bryson\\_decision\\_redacted-version%201.pdf](http://www.irs.gov/pub/irs-utl/bryson_decision_redacted-version%201.pdf)
- Tiongson: [http://www.irs.gov/pub/irs-utl/Tiongson%20-%20IRS\\_Ddecision%20on%20Tiongson%20Motion%20for%20Default%20\(FINAL\)%20-%2004-3-13.pdf](http://www.irs.gov/pub/irs-utl/Tiongson%20-%20IRS_Ddecision%20on%20Tiongson%20Motion%20for%20Default%20(FINAL)%20-%2004-3-13.pdf)
- Walker: <http://www.irs.gov/pub/irs-utl/Walker%20FAD%2002-18-13.pdf>



# Relevant Recent OPR Cases

(cont)

- Bohn: <http://www.irs.gov/pub/irs-utl/Morton%20Bohn%20SJ%20Order%20-FINAL%20Redacted.pdf>
- Gee: [http://www.irs.gov/pub/irs-utl/opr-edgar\\_h\\_gee\\_jr\\_-\\_final\\_order.pdf](http://www.irs.gov/pub/irs-utl/opr-edgar_h_gee_jr_-_final_order.pdf)
- Tedder: <http://www.irs.gov/pub/irs-utl/GTedder%20Default%20Order%20-%20Redacted%20Version.pdf>

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