



Due Diligence for Practitioners in the Real World!

Presented by:

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Embracing a Habit of Due Diligence

*"excellence... is not an act,
but a habit"*

Aristotle

Learning Objectives

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

- Understand the application of Circular 230 in your practice
- Develop a strategy for client meetings; asking the right questions, getting the right information
- Recognize the potential for conflicts of interest
- Apply a process of best practices to enhance your due diligence requirements

Circular 230 Due Diligence Provisions

- Diligence as to accuracy § 10.22
- Conflicting interest § 10.29
- Best practices for tax advisors § 10.33
- Standards § 10.34
- Competence § 10.35
- Requirements for written advice § 10.37

Circular 230 (Rev 6-2014):

<http://www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals>

What effort is required of you?

To be.....

- Reasonable
- Prudent
- Ethical
- Persistent
- Consistent

Diligence as to Accuracy

§ 10.22

- Must exercise Due Diligence in:
 - Preparing, approving and filing tax returns
 - Determining correctness of oral/written representations
- Reliance on Another's Work Product?
 - With Reasonable Care
- Know Your Client



Best Practices § 10.33

- Communicating clearly
- Establishing the facts
- Advising clients of conclusions
- Acting fairly and with integrity

Real World Situations

Strategy for client meetings

- Follow a process
- Use checklists and questionnaires
- Ask the questions!
- Document the answers and discussions

Real World Situations

Strategy for preparing tax returns

- Know the law
- Gather the facts and relevant information
- If in doubt, ask!
- Communicate the conclusion

Earned Income Tax Credit Due Diligence Requirements

Internal Revenue Code § 6695(g)

Four due diligence requirements

1. Complete and submit Form 8867
2. Complete and keep all worksheets used to compute the credit
3. Keep records
4. Apply the knowledge requirement

Due Diligence Requirements

- PATH ACT of 2015
 - Program Integrity Section
 - Expanded IRC § 6695(g) to include
 - American Opportunity Education Credit
 - Child Tax Credit
 - eitc.irs.gov/Tax-Preparer-Toolkit/hottopicserp

EITC Due Diligence Must Do's

- Know the law!
 - EITC eligibility requirements
 - Form 8867
 - www.eitc.irs.gov/Tax-Preparer-Toolkit
- Know your client
- Questions you must ask:
 - Are the answers reasonable?

EITC Due Diligence Must Do's

- Document at the time of the interview:
 - Proof of eligibility, bank records, etc.
 - Client Organizer / Questionnaire
 - Software checklist
 - Keep all notes / references!
- Court cases:
 - Fraud
 - Complexity of law

Foreign Income / Accounts

Due Diligence Requirements

- Know the law!
 - Foreign Account Tax Compliance Act
 - Form 8938; FinCen Form 114
- Know your client
- Questions you must ask:
 - foreign income, foreign assets
 - travel patterns, family abroad

Foreign Income / Accounts

- Documentation:
 - Bank statements, foreign asset documents
 - Client Organizer / Questionnaire
 - Keep all notes / references!
 - Travel calendar, Emails, Verbal discussions
- Court cases:
 - USA v. Robert Bandfield et al

Hobby vs. Business

Due Diligence Requirements

- Know the law!
 - IRS § 183; Treasury Reg 1.183-1 provide the facts
 - Treasury Reg 1.183-2 provides criteria for evaluation
 - Income / Expenses/ Deduction ordering rules
- Know your client

Hobby vs. Business

- Questions you must ask... Every year!
 - Manner, motive, expertise, time and effort, assets, success, profits, personal pleasure
- Documentation:
 - Hobby Due Diligence Questionnaire
 - Client Organizer / Questionnaire
 - Emails, other correspondence
 - Verbal discussion – take notes!

Hobby vs. Business

- Court cases:
 - Thomas Gullion vs Commissioner
 - T.C. Summary Opinion 2013-65
 - Estate of Stuller, 117 AFTR 2d 2016-549
 - (7th Circuit 2016)

Affordable Care Act

Due Diligence Requirements

- Know the law!
 - Use IRS resources and FAQs
 - Keeping up with changes
 - No specific documentation needed from client
 - Should receive a version of Form 1095
- Know your client
- Questions you must ask:
 - Who is included in a tax household?

Affordable Care Act

- Questions you must ask:
 - What amounts are included in household income?
- Documentation:
 - Form 1095-A, 1095-B, 1095-C
 - Client Organizer / Questionnaire
 - Emails, other correspondence
- Court cases: Are you kidding?
 - This is the biggest tax law challenge since the Tax Reform Act of 1986!

Conflicting Interests § 10.29

Due Diligence Requirements

- Know the law!
 - Circular 230 §10.29
- Questions you must ask:
 - Marital status, business relationships
- Know your client
- Examples:
 - Shareholders
 - Couple separated, not yet divorced

Marijuana Businesses

Due Diligence Requirements

- Know the law!
 - Federally unlawful even when legal in state
 - A tax preparer will not be considered unethical serving clients
 - Code Section 280E
 - Ordinary & necessary business expenses denied
 - Cost of goods sold - allowed

Marijuana Businesses

- Questions you must ask:
 - Record keeping; profit motive; compliance with state law
- Documentation:
 - Client Organizer / Questionnaire
 - Emails, other correspondence
 - Verbal discussion – take notes!
- Court cases:
 - Martin Olive vs Commissioner

Procedures to Ensure Compliance § 10.36

Anyone who has, or shares **principal authority and responsibility** for overseeing a firm's Cir 230 practice 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 Circular 230.**

What we did for the last hour?

- Discussed the application of Circular 230 in your practice
- Considered strategies for client meetings; asking the right questions, getting the right information
- Reviewed the potential for conflicts of interest
- Examined a process of best practices to enhance your due diligence requirements

Have you been.....

- Reasonable
- Prudent
- Ethical
- Persistent
- Consistent

Document!

For More Information

National Society of Accountants

More information is available including

additional materials at:

Booth in Vendor Hall

Or Table in Lobby

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