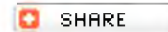




Best Practices: How to prepare for and what to do when a tax practitioner dies

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Best Practices: How to prepare for and what to do when a tax practitioner dies

Disclaimer: This article does not constitute legal advice; it's provided for general informational purposes only.

Benjamin Franklin famously wrote, "[I]n this world nothing is certain but death and taxes." When a Circular 230 practitioner dies, leaving behind a tax practice, there can be many questions and much uncertainty about the practitioner's preparations beforehand and the consequences for clients and those responsible for administering the deceased practitioner's estate. The governing legal obligations and restrictions may vary from case to case depending on the practitioner's status as an attorney, certified public accountant (CPA), or enrolled agent and where the practitioner conducted their practice.

[Treasury Circular 230](#) sets forth rules of conduct for attorneys, CPAs, enrolled agents, and other persons representing taxpayers before the IRS. While Circular 230 does not directly address the implications of a practitioner's death, section 10.33 sets forth aspirational best practices that tax practitioners should consider. This article discusses issues raised by the death of a tax practitioner and offers several best practice tips to protect the

practitioner's clients, firm, and family and to ensure compliance with legal requirements of privacy and confidentiality.

Be Prepared by Incorporating Best Practices into Your Practice

It starts at the beginning! A key best practice for all practitioners is to communicate clearly and regularly with clients and manage client expectations throughout the representation. This best practice begins when the practitioner first engages with the client. The practitioner should discuss all significant aspects of the representation — the scope, terms, purposes or objectives, and actions to be taken during the representation and at its termination. Further, these significant aspects ideally should be memorialized in a comprehensive engagement letter with the client. As the representation progresses, the practitioner should provide timely updates to the client, documented in writing, and if necessary, revise the engagement letter to reflect material developments. Should a practitioner unexpectedly become incapacitated or die, the comprehensive engagement letter and timely updates will assist in any needed transition of the client's matter to another tax professional.

Another best practice is to establish a clear policy for retention, disposition (including destruction), and return of client files and other records. You can communicate this policy clearly to clients in the engagement letter. Retaining client files beyond the need for them leaves tax practitioners at risk for potential exposure of confidential client information and, upon the practitioner's retirement, incapacity, or death, can cause an unnecessarily burden in dealing with the files and related records.

Best practices also include implementing a data security and privacy plan that complies with rules, requirements, and guidelines applicable to your practice.^[1] Also consider adopting a business continuity plan that addresses the effect of extraordinary broadscale events (such as a natural disaster, cyberattack, or a pandemic) and lays out steps to be taken in the event of the practitioner's incapacity, death, or general unavailability. Pertinent portions of the plan can be shared with clients (e.g., by inclusion in the engagement letter).

Adhering to these best practices will advance the goal of providing the highest quality representation to clients.

Make a Succession Plan

Practitioners should consider developing a formal succession plan that addresses how the sale or termination of the practitioner's business (due to retirement, incapacity, or death) will be handled.^[2] This succession plan should be described in the practitioner's engagement letter or otherwise shared with clients. In developing a succession plan, the practitioner should consider the following actions:

- Entering into an agreement with another tax practitioner, an “assisting practitioner,” who will close the practice, and familiarizing the assisting practitioner with the contours of your practice.
- Keeping an up-to-date inventory of all open client matters, including client names, addresses, and contact information.^[3]
 - This inventory should be sufficiently detailed to allow assisting practitioners, or whoever assumes responsibility for the representation, to quickly comprehend the client’s needs and expectations, including any upcoming deadlines, and to minimize delays, client inconvenience, or impairment of the representation.
 - All files should be secured, e.g., with passwords and encryption, and steps taken to ensure the assisting practitioner can securely access the records.
- Ensuring the assisting practitioner has access to information and funds to stay current with bills and finances.
- Discussing with clients whether to authorize additional practitioners to represent the client or receive information on the client’s behalf via a Form 2848 or Form 8821, respectively, to avoid an interruption in representation before the IRS.
- Devising a communications plan to inform clients in the event of the practitioner’s incapacity or death.
- Speaking with your own family members regarding the existence of the succession plan and their involvement with the plan.

What to Do if a Practitioner Becomes Incapacitated or Dies

When the tax practitioner either becomes incapacitated or dies, if there is a succession (or business continuity) plan, the practitioner’s firm or assisting practitioner should implement the plan and communicate with the practitioner’s clients and the IRS. If there is no succession plan, in the case of a sole practitioner, the executor or administrator of the practitioner’s estate will have to take these actions and should consider retaining a tax professional to assist them.

Communication with Clients

- Procedures should be put in place for the handling of ongoing client matters according to what each client wants and for the disposition of client files, i.e., their return to the client, transfer to the assisting or another practitioner, or their destruction.
 - If a succession plan is in place and the client has previously been informed of what would happen to their matter upon the practitioner’s incapacity or death, while not required under Circular 230 (or bar and accountancy rules), this advance notice to clients about who will receive their records (and assume

responsibility for their cases) will set expectations and is considered a best practice by many practitioners.

- **Client Choices**

- If the client chooses to remain with the practitioner's firm (or with another practitioner agreed to in advance), the assisting practitioner must ensure that all necessary paperwork is filed with the IRS (especially for clients under examination).
 - If the client chooses to go elsewhere, arrangements should be made for the prompt and orderly transfer of all the client's files. Section 10.28 of Circular 230 addresses a practitioner's obligation to return client records upon the client's request; any successor practitioner would have a similar obligation.
- If there is no succession plan and no advance notice to the client, the assisting practitioner should promptly confirm arrangements with each client. No client files should be transferred to another practitioner without the client's permission.

See "Client Choices" above.

- In implementing a succession plan, the assisting practitioner should also consider these best practices:
 - Ensure that no files are removed without client permission.
 - Control access to the premises.
 - Backup electronic files (whether stored locally or in the cloud).
 - Interview employees, independent contractors, and vendors to ascertain all known clients and client property beyond available records.
 - Consider publication in local media of the office closure and the need for clients to retain new representation and take possession of their files.
 - Keep copies of files for the deceased practitioner's estate, as necessary, in connection with potential claims against the practitioner and to help determine the rights to fees and reimbursable expenses.
 - Track and confirm that clients have received notice.
 - Safeguard client confidentiality.

Communication with the IRS

- **Return Preparer Office (RPO):** If the deceased practitioner had a preparer tax identification number (PTIN), there is no need for the assisting practitioner to inform the RPO of the death. The RPO checks the National Accounts Profile (NAP) monthly and changes PTIN statuses to "deceased" as appropriate.

In contrast, the RPO should be notified if the practitioner is incapacitated. Notification by a fiduciary (e.g., a guardian or trustee with a Form 56, Notice of Fiduciary Relationship, on file with the IRS) will cause the RPO, upon the fiduciary's request, to change the practitioner's PTIN status to "inactive." If the notification is submitted by someone other than a fiduciary (such as an assisting practitioner), the RPO will log the information, with the PTIN subsequently expiring.

- **CAF Unit.** To close out a deceased practitioner's CAF number, the assisting practitioner or a member of the practitioner's firm (or in the case of a sole practitioner and no assisting practitioner, the executor or administrator of the practitioner's estate) should send a written request, by fax or mail, to the CAF Unit identified in the "Where to File" chart in the Form 2848 and Form 8821 instructions. Once the CAF Unit receives the notice, they will mark the CAF # owner as deceased, which nullifies all authorizations listed on the CAF for the deceased practitioner.

If a practitioner becomes incapacitated and a fiduciary has been appointed (and a Form 56 is filed with the IRS), the fiduciary can withdraw the incapacitated practitioner from all active authorizations.

- **Canceling Employer Identification Number (EIN) and Closing Out Account.** The EIN is a business's permanent federal taxpayer identification number, so it technically cannot be canceled. But for the EIN of a deceased practitioner's business, the business account that is associated with the EIN can be closed. To close the business account, the deceased practitioner's firm or assisting practitioner should send the IRS a letter that includes:
 - Full legal name of the business
 - EIN
 - Business address
 - Reason for closing the account

The notice assigning the EIN from the IRS should also be enclosed with the close-out letter, if available.

Send the document(s) to:

Internal Revenue Service
Cincinnati, OH 45999

The business account can only be closed once all necessary returns have been filed and all outstanding taxes paid. For more information, see:

- [Canceling an EIN - Closing Your Account.](#)
- [Closing a Business](#)

Ensuring Confidentiality of Taxpayer Information

The deceased practitioner's firm, the assisting or successor practitioner, and the executor or administrator should safeguard any taxpayer information they receive from or in connection with the incapacitated or deceased practitioner's practice. For general guidance on safeguarding taxpayer information, see [IRS Publication 4557, Safeguarding Taxpayer Data \(A Guide for Your Business\)](#).^[4]

[1] For general information, see [IRS Publication 4557, Safeguarding Taxpayer Data: A Guide for Your Business](#), and [IRS Publication 5293, Protect Your Clients; Protect Yourself – Data Security Resource Guide for Tax Professionals](#). If you are an Authorized IRS e-file Provider, see [IRS Publication 1435, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns](#) (including "Safeguarding IRS e-file" in Chapter 2).

[2] A succession plan is a matter of professional responsibility for attorneys. See, e.g., ABA Model Rule of Professional Conduct 1.3 (Diligence), Comment [5] ("To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action."); accord ABA Formal Ethics Opinion 92-369 (1992) (sole practitioners should "make arrangements for their client records to be maintained in the event of their own death" and "at a minimum include the designation of another lawyer" who would have authority to review the records and notify clients of their attorney's death). See, generally, Emily Schmidt, *Should States Require Private Attorneys to Maintain Succession Plans?*, UCLA Law Review Blog (Nov. 23, 2021) (noting that four states mandate succession planning for sole practitioners, while an additional 38 states recommend it).

[3] If the assisting practitioner wishes to confirm who the incapacitated or deceased practitioner was authorized to represent before the IRS, a Freedom of Information (FOIA) request may be filed with the IRS's Centralized File Authorization (CAF) Unit. The CAF will generate a listing of clients by the representative, which the assisting practitioner may compare against the practitioner's files. (This listing is called the CAF 77.)

[4] Safeguarding client information is also part of an attorney-practitioner's (and law firm's) ongoing professional responsibility. ABA Model Rule of Professional Conduct 1.6.

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