

Ethics

Presented by
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Welcome

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Learning Objectives

- Describe how Circular 230 provisions apply to tax firms and tax professionals
- Identify current IRS enforcement programs, sanctions, and penalties relating to tax professionals
- Describe the latest IRS programs regarding identity theft fraud
- Incorporate best practices relating to confidentiality, privacy, and information security into their daily work



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IRS Authority

- Treasury Department has authority to regulate those who practice before it -
- Title 31, USC Subtitle A, Part 10, §330
- This section is Circular 230
- Internal Revenue Code (IRC) is Title 26



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Who May Represent

- EAs, CPAs, Attorneys in good standing – unlimited with Form 2848
- Enrolled Retirement Plan Agents – in regard to 5300 & 5500 series forms
- Enrolled Actuaries – certain IRC sections
- Fiduciaries – with completed Form 56
- Family Members – spouse, parent, child, brother, sister, (and step relationships of these), grandparent, or grandchild



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Who May Represent

- Unenrolled preparers – if they prepared and signed the return, and participated in the Annual Filing Season Program “AFSP” (since 2016, for the tax year under examination and the year the examination takes place). Limited to conversations or meeting with RAs, customer service reps, and the like. Not Revenue Officers, Appeals, attorneys from Chief Counsel’s office, etc.



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Who May Represent

- In Tax Court, only an attorney or USTCP.



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Taxpayer Bill of Rights



1. The Right to be Informed
2. The Right to Quality Service
3. The Right to Pay No More than the Correct Amount of Tax
4. The Right to Challenge the IRS's Position and be heard
5. The Right to Appeal an IRS Decision in an Independent Forum



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Taxpayer Bill of Rights

6. The Right to Finality
7. The Right to Privacy
8. The Right to Confidentiality
9. The Right to Retain Representation
10. The Right to a Fair and Just Tax System



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Professional Competency

- Annual Filing Season Program (AFSP) implemented in 2015 filing season
 - Aimed at unenrolled preparers
 - Record of Completion issued with CE completion (18 CE hours including 6 hours of Annual Federal Tax Refresher)
- Optional for Enrolled professionals



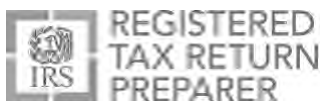
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Professional Competency

- Annual Federal Tax Refresher Course (AFTRC)
 - Required for unenrolled preparers participating in AFSP
 - Optional for enrolled preparers, but cannot get CE credit for taking the AFTRC
 - Exceptions apply (RTRP test passers, State return preparer tests, VITA, Part I of SEE passed)



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Registered Tax Return Preparers

- RTRP program suspended in 2013
- Legislation recently proposed that would allow IRS to regulate return preparers



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Identity Theft

- IRS continues to take ID theft seriously.
- Partnered with payroll firms to include 16-digit verification code on some W-2s, program was expanded for 2016, but remained optional.
- Some states requiring use of Driver's License information to e-file.
- Software providers increased PW requirements.



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PTINs

Preparer Tax Identification Number

- Used to be voluntary, now mandatory for anyone preparing a return for compensation
- EAs must have valid PTIN to practice (whether or not they prepare returns) Circular 230 §10.6(d)(2)(i)
- Court found that IRS may not charge for PTINs, some of past fees paid may be refunded.
- Unknown if IRS is going to appeal or what further actions will be (on July 25th IRS asked for stay while deciding what to do)



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EA Renewal Cycle

Circular 230 §10.6(d)

- Renewal application must be submitted between November 1 and January 31 (of the renewal year) inclusive

Social Security Number Ends in:	Renewal Year
0, 1, 2, 3	2019
4, 5, 6	2020
7, 8, 9	2018



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CE Requirements

For EA Renewal - Circular 230 §10.6(e)

- Minimum IRS CE Requirements -
 - Enrollment Cycle (3 years): 72 CE hours total, 6 hours of Ethics required
 - Annual Minimum: 16 CE hours total, 2 hours Ethics required
 - Reminder: 3x Annual will not meet minimum CE requirement – (16 x 3 = 48)
 - Overage in one year cannot be used to make up deficiency in another year



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CE Requirements

For EA Renewal - Circular 230 §10.6(h)

- IRS Recordkeeping Requirements-
 - Responsibility of Practitioner, not the provider
 - CE providers do upload hours to the IRS
 - Certificate must meet IRS requirements
 - Certificate must be retained – this is to ensure all CE hours relate to federal tax information - general information and state tax information hours do not meet IRS requirements



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CE Requirements

For EA Renewal - Circular 230 §10.6(h)

IRS Recordkeeping Requirements-

- All written materials should be retained, such as outlines, syllabi (syllabuses for most of us), textbooks, and/or electronic materials provided or required



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Contingent Fees

Circular 230 §10.27(b)
Generally not allowed



- **Exceptions –**
 - Examination or challenge of an original return
 - An amended return if filed within 120 days of an examination of an original return
 - For a claim for refund
- **Does not apply to activities not involving representation**



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Client Omissions & errors

Circular 230 §10.21

- If a practitioner has knowledge of omission or error,
- Or non-compliance with the tax code,
- Must advise the client promptly –
 1. Of the omission, error, or non-compliance
 2. Of the consequences of such non-compliance



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Due Diligence

Circular 230 §10.22



- A practitioner must exercise due diligence -
- In preparation of documents (returns, documents, affidavits, and other papers)
- In determining the correctness of oral or written representations to the Dept. of Treasury
- In determining the correctness of oral or written representations made to the client



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Due Diligence

For Earned Income Tax Credit

- Standards for EITC are high
- Includes completing Form 8867
- Records must be retained 3 years
- Preparer is a policeman, cannot use information that is known, or should have known, to be incorrect
- One CE hour available for taking IRS due diligence training for EITC on IRS website



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Due Diligence

Now Applies to Child Tax Credits (both CTC and ACTC) and American Opportunity Tax Credit

- Added by the PATH Act of 2015
- Due Diligence for EITC, CTC, and AOTC all on Form 8867
- Preparer penalties for violations - \$510 (in 2016 & 2017) per credit per return. Plus possible injunctive action.



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Due Diligence

Form 8867 Department of the Treasury Internal Revenue Service	Paid Preparer's Due Diligence Checklist Earned Income Credit (EIC), Child Tax Credit (CTC), and American Opportunity Tax Credit (AOTC) ▶ To be completed by preparer and filed with Form 1040, 1040A, 1040EZ, 1040NR, 1040SS, or 1040PR. ▶ Information about Form 8867 and its separate instructions is at www.irs.gov/form8867 .	OMB No. 1545-1629 2016 Attachment Requirement Sequence No. 177	
Taxpayer name(s) shown on return		Taxpayer identification number	
Enter preparer's name and PTIN			
Due Diligence Requirements			
Please complete the appropriate column for all credits claimed on this return (check all that apply).			
	EIC	CTC/ACTC	AOTC
1 Did you complete the return based on information for tax year 2016 provided by the taxpayer or reasonably obtained by you?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
2 Did you complete the applicable EIC and/or CTC/ACTC worksheets found in the Form 1040, 1040A, 1040EZ, or 1040NR instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
3 Did you satisfy the knowledge requirement? Answer "Yes" only if you can answer "Yes" to both 3a and 3b. To meet the knowledge requirement, did you:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
a Interview the taxpayer, ask adequate questions, and document the taxpayer's responses to determine that the taxpayer is eligible to claim the credit(s)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
b Review adequate information to determine that the taxpayer is eligible to claim the credit(s) and in what amount?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
4 Did any information provided by the taxpayer, a third party, or reasonably known to you in connection with preparing the return appear to be incorrect, incomplete, or inconsistent? (If "Yes," answer questions 4a and 4b. If "No," go to question 5.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
a Did you make reasonable inquiries to determine the correct or complete information?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No



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Best Practices

Circular 230 §10.33

- Clearly Outlining the terms of engagement
- Arriving at conclusions based on law & facts
- Communicating that conclusion, and the implication of relying on that conclusion, to clients
- Cannot take a frivolous position



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Best Practices

Circular 230 §10.33

- Act “fairly and with integrity” when practicing before the IRS
- Do not lie to the IRS (take a willful position to understate tax liability, or intentional disregard of the regulations)
- Determine if what the client tells you makes sense, and is consistent with other known facts.



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Unreasonable Delays

Circular 230 §10.23

- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS
- What is unreasonable is an administrative (facts and circumstances) decision and not a legal one



I want it, and I want it now!



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Return of Client's Records

Circular 230 §10.28

- Records to be Returned –
 - Documents presented or obtained by you while representing the taxpayer, that pre-existed the engagement
 - Materials prepared by the client or a third party and provided to the preparer with respect to the matter of representation
 - Any return, claim for refund, schedule or other document presented to the client with respect to prior representation if necessary for the client to meet their tax obligations



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Negotiation of Client Checks

Circular 230 §10.31

- Practitioners may not endorse or negotiate a refund check from client.
- This includes directing or accepting payment by any means into an account owned by the practitioner or the practitioner's firm.
- Form 8888 may include only the taxpayer's accounts, not the practitioner's.



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Conflicting Interests

Circular 230 §10.29(a)

- A real or seeming incompatibility between one's private interests and one's public or fiduciary duties, or
- A real or seeming incompatibility between the interests of two or more clients.



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Conflicting Interests

Circular 230 §10.29(a)

- Divorced or Separated Spouses
- Parents & Children, or Grandparents & Descendants
- Domestic Partners
- Business Partners



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Waiver of Conflict of Interest

Circular 230 §10.29(b)

- Waiver possible if -
 - Competent & diligent representation possible to all parties
 - Representation not legally prohibited
 - Parties notified and consent, sign waiver within 30 days



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Incompetence & Disreputable Conduct - Circular 230 §10.51

- Conviction of any criminal offense of tax laws or breach of trust
- Conviction of any felony rendering practitioner unfit for practice
- Practitioner willfully failing to file their own tax return or evade payment of tax



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Incompetence & Disreputable Conduct - Circular 230 §10.51

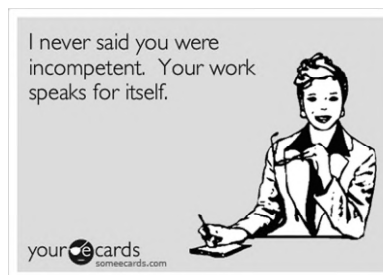
- Representation without Authorization
- Preparing a return without a valid PTIN
- Contemptuous conduct in connection with practice before the IRS (IRS employees complain to OPR)
- Aiding or abetting a person to practice before the IRS while suspended



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Incompetence & Disreputable Conduct - Circular 230 §10.51

- Giving false opinions knowingly, recklessly, or through gross incompetence
- Willfully failing to sign a return
- Unauthorized disclosure of client information



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Incompetence & Disreputable Conduct Sanctions



Circular 230 §10.50

- Letter of Reprimand (Private)
- Censure (Public)
- Suspension (6 months to < 60 months)
- Disbarment (\geq 60 months or permanent)
- Monetary Penalties (Rare)
 - May be imposed on individual or firm



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Incompetence & Disreputable Conduct Sanctions



Circular 230 §10.50

- Sanctions apply to “any” practitioner who practices before the IRS
- After Loving practicing only includes those activities authorized in Circular 230, that is when a practitioner represents a taxpayer
- May not sanction tax return preparers, etc.



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Incompetence & Disreputable Conduct Sanctions & Appeals Process

OPR takes their case to an Administrative Law Judge



If no appeal, decision is final



If unfavorable decision, 30 days to appeal



Appeals taken to Tax Court or Agency Appeal Authority



Preparers can agree to Sanctions by consent



Sanctions Published in IRB



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Penalties in IRC

IRC §§6694 & 6695



- Usually Monetary
- Failure to provide copy of return, or sign return, or disclose PTIN, or to correct return
- Endorse or negotiate a client's check
- Disbarment (\geq 60 months or permanent)
- Failure to exercise due diligence



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Penalties in IRC

IRC §§6694 & 6695



- Unreasonable positions
- Willful or Reckless Misconduct
- Amounts of Penalties now adjusted for inflation - §6695(h) added by ABLÉ Act



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Maintaining Information Security

- Proper Handling and protection of taxpayers' PII (Personal Identifiable Information) is required by the IRS and the law for:
 - Tax Preparers
 - Those authorized to practice before the IRS
 - Tax firms and companies



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Maintaining Information Security

- Arising from the Security Summit in July 2016 the IRS Released a "Fact Sheet"(FS-2016-23) outlining "Critical Steps" for tax preparers to take to protect taxpayer data.
 - Assure that taxpayer data, including data left on hardware and media, is never left unsecured
 - Securely dispose of taxpayer information
 - Require strong passwords (numbers, symbols, upper & lowercase) on all computers and tax software programs
 - Require periodic password changes every 60 - 90 days



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Maintaining Information Security

- IRS “Critical Steps” continued -
 - Store taxpayer data in secure systems and encrypt information when transmitting across networks
 - Ensure that e-mail being sent or received, that contains taxpayer data, is encrypted and secure
 - Make sure paper documents, computer disks, flash drives and other media are kept in a secure location and restrict access to authorized users only
 - Use caution when allowing or granting remote access to internal networks containing sensitive data



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Maintaining Information Security

- IRS “Critical Steps” continued -
 - Terminate access to taxpayer information for anyone who is no longer employed by your business
 - Create security requirements for your entire staff regarding computer information systems, paper records and use of taxpayer data
 - Provide periodic training to update staff members on any changes and ensure compliance
 - Protect your facilities from unauthorized access and potential dangers
 - Create a plan on required steps to notify taxpayers should you be the victim of any data breach or theft



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Maintaining Information Security

- Possible Downsides to a PII breach:
 - Circular 230 Sanctions & Penalties
 - Penalties under the IRC
 - Loss of customers through lack of confidence in the organization
 - Loss of revenue
 - Additional costs such as payroll or providing protection services



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Maintaining Information Security

- Information security should be important to everyone, from the sole proprietor to large companies
- Example: Electronically stored data should be encrypted and password protected



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Maintaining Information Security

- Good practice: Companies should have a written security plan
- Some elements of a written plan that may be included:
 - Information Security Department
 - Responsibilities
 - Classifications
 - Protocols
 - Expectations
 - Information Handling



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Information Security

Information Security Department

- May be needed if the company is large enough
- Provides framework for implementing security policies
- Should have sufficient authority to enforce policies at all levels



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Information Security Responsibilities

- Who is responsible for what is clearly defined
- What those responsibilities are is clearly defined



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Information Security Classifications

- Purpose is so everyone knows how sensitive information is.
- Examples may include:
 - Public
 - Internal Use Only
 - Confidential
 - Secret



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Information Security Protocols

- Standard protocols on how information is obtained, stored, released, destroyed
- Examples may include:
 - Who has access to what
 - Internal controls granting access
 - How to handle terminations, LOA, etc.
 - Other controls over storage, etc.



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Information Security Expectations

- Everyone in the process needs to know what to expect and what is expected
- Examples may include:
 - Clients privacy expectations
 - Staff needs to know what is expected of them
 - Third-Party Disclosures



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Information Security

Information Handling - Electronic

- Policies dictating how information is secured and handled across various mediums
- Examples may include:
 - Internet & Email
 - Encryption & Passwords
 - Interconnectivity between devices



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Information Security

Information Handling - Physical

- Examples may include:
 - Printing, Copying, Faxing
 - Policies regarding data encryption on portable devices, and procedures should such devices be lost or stolen
 - Handling including Shipping and Handling
 - Storage
 - Destruction or disposal (both of printed information & electronic equipment)



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Attorney Client Privilege IRC §7525

- Extends attorney-client privilege to non-attorneys when communicating with clients with respect to tax advice, if that communication would be privileged if done with an attorney
- Does not authorize non-attorneys to practice law
- Does not apply to tax returns, or communications in regard to preparing tax returns



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Attorney Client Privilege IRC §7525

- Belongs to the **Client**, not the practitioner
- May be waived by the client, cannot be waived by the practitioner
- Disclosure or waiver may be inadvertent
 - Client makes protected information public
 - Communication in the presence of non-attorneys or disclosed to those other persons



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Attorney Client Privilege IRC §7525

- Examples of Waiving Privilege -
 - Turning Information over to the IRS
 - Disclosure to a person outside the attorney-client relationship, e.g., providing tax information to a mortgage lender
 - Disclosing data underlying privileged information

Confidential Document
Attorney-Client Privilege



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Attorney Client Privilege IRC §7525

- Examples of Waiving Privilege -
 - Failure to keep privileged records segregated from non-privileged records
 - Being sued by the client or other adversarial relationship with a (likely former) client
 - Disclosure to another government agency



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Thank you for
Attending!!
Chris

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