

# 2 HOUR ETHICS CONTINUING PROFESSIONAL EDUCATION COURSE

IRS Provider Number: P619F  
IRS Course Number: P619F-E-00062-21-S

CTEC Provider Number: 2040  
CTEC Course Number: 2040-CE-0004



GOLDEN STATE TAX  
TRAINING INSTITUTE, INC.

Email: [Support@GSTTI.com](mailto:Support@GSTTI.com)

Voice: 877-674-9290

Fax: 877-674-3472

[www.GSTTI.com](http://www.GSTTI.com)





## **EXCLUSIVE PUBLISHERS OF THIS LIMITED EDITION**

ALL RIGHTS RESERVED, NO PART OF THIS PUBLICATION MAY BE REPRODUCED, STORED IN A RETRIEVAL SYSTEM, OR TRANSMITTED, IN ANY FORM OR BY ANY MEANS, ELECTRONIC, MECHANICAL, PHOTOCOPYING, RECORDING, OR OTHERWISE, WITHOUT WRITTEN PERMISSION OF THE PUBLISHER.

This material is for educational purposes only and specific to the subject matter contained in the Table of Contents, and in no way does it cover all aspects of the tax code. Rather, it is constructed to offer an accurate representation of the subject matter being covered. Purchase of this course or any other course offered by Golden State Tax Training Institute, Inc. comes with the provision that they are not for the purposes of offering legal or other professional services. Additionally, the course contains the current tax law as to date of publication. Any important tax law changes will be sent to students in the form of a supplement.

ARTICLES AND COMMENTARY INCLUDED HEREIN DO NOT CONSTITUTE AN OPINION AND ARE NOT INTENDED OR WRITTEN TO BE USED, AND THEY CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER.

Copyright is not claimed in any material secured from official U.S. government publications or circulars.



# Table of Contents

Introduction .....	ii
Course Description .....	ii
Course Learning Objectives .....	ii
<b>Lesson 1 .....</b>	<b>1-1</b>
Professional Responsibilities, Ethics, Penalties .....	1-1
Practice Before the IRS .....	1-2
Sarbanes-Oxley Act of 2002.....	1-8
Rules for Tax Preparers – Circular 230.....	1-8
Subpart A.....	1-10
Subpart B.....	1-19
Subpart C.....	1-26
Subpart D.....	1-28
Subpart E.....	1-32
Individual Income Tax Penalties.....	1-32
Tax Return Preparer Penalties .....	1-34
Paid Preparer’s Due Diligence Checklist.....	1-35
Additional Tax Return Preparer Penalties .....	1-38
Review Feedback .....	1-40
Glossary.....	I
Bibliography .....	III
Index .....	IV
Examination Instructions - 2 Hour Ethics .....	EX-1
Examination Questions - 2 Hour Ethics.....	EX-2
Course Evaluation .....	CE-1



# Introduction

Thank you for choosing Golden State Tax Training Institute, Inc. This intermediate self-study course covers Federal Tax Preparer Ethics and is eligible for 2 hours of CPE credits. We know your time is important to you, so we have produced the most comprehensive and innovative tax education products on the market today. We focus on customer service and satisfaction and we strive to look for new and responsive ways to make earning your IRS and CTEC requirements as convenient as possible.

Since this is a self-study course, you can complete it at your own pace and on your own schedule. The minimum passing requirement is 70% on the examination questions at the end of the material. The online exam has no time limit and is open book, so you are allowed to look up answers in the text we provide. You do not need to finish the exam in one continuous sitting as all of the answers you enter online are automatically saved. After you submit the exam to us, we will grade it and, upon successful completion, e-mail you a Certificate of Completion and notify the IRS and CTEC (if applicable) that you earned CPE credits.

## Course Description

This course focuses on Federal tax preparer ethics and responsibilities. The course highlights principals of professional conduct that are of significant importance to a tax practitioner. Among other topics, this course includes information about the requirements of practice before the IRS including power of attorney, rules for tax preparers (Circular 230) and tax return preparer penalties.

All 2021 legislative amendments and changes received as of press time are reflected, and references to Federal tax laws are up to date as of the publication of this course. The focus is on the law applicable to the filing of income tax returns in 2022 for the 2021 tax year. However, if we do not have the 2021 tax year information, we show the 2020 tax year numbers as a reference. Also, if legislation has made changes effective during 2021, we indicate this along with the effective date to avoid confusion.

The course includes a table of contents and comprehensive index to help guide your search for specific topics. Additionally, if you are using the electronic version of the course, you can use the word search function by pressing "CTRL + F" on your keyboard and entering the word(s) you would like to look up.

Along with the extensive course content, you will also find a glossary and a bibliography you can use to find additional reference material when searching for particular topics or answers to review and examination questions. The numbers in parentheses at the end of a sentence correspond to the numbers in the bibliography.

**Completion Deadline and Exam:** This course, including the examination, must be completed within one year of the date of purchase or by December 31<sup>st</sup> of the current year if qualifying for the IRS Annual Filing Season Program (AFSP). CTEC Registered Tax Preparers must complete by January 15<sup>th</sup> which is the late CTEC deadline for annual registration (early registration deadline without penalty is October 31<sup>st</sup>).

**Course Level:** This course is appropriate for tax professionals at all knowledge levels.

**CPE Credits:** 2 Hours

**Category:** Ethics

**Prerequisite:** None

**Advanced Preparation:** None

## Course Learning Objectives

1. Identify important aspects of practice before the IRS including power of attorney and confidentiality privileges.
2. Recognize the framework for using the rules of Circular 230, along with the terminology used by the circular and its applicability to each tax practitioner.
3. Distinguish tax preparer penalties and the varying sanctionable acts that trigger practitioner discipline.



## Review Questions and Feedback

Throughout the lesson there are several review questions that are designed to help you learn the material you have just studied. Review questions are for instructional use only and you will not be graded on these questions. We provide both the answers to each question and an explanation or feedback as to how we arrived at each answer at the end of the lesson. Review feedback also contains evaluative feedback explaining why incorrect answers are wrong.

Best practice suggests that you should try to answer these questions on your own first, and only then refer to the answer key and feedback to see how well you did in terms of learning the material. As with all self-study CPE courses, you can refer back to the course material to locate the answers - the so called 'open book' learning method is permissible.

## Final Examination

The final examination is intended to test your overall comprehension of the course. Each question will relate to topics found throughout the course so all of the answers can be found in the material. Passing the final examination from a self-study course is contingent upon scoring 70% or higher on the exam questions related to the course material. The examination consists of 10 multiple-choice questions, meaning you must correctly answer 7 in order to pass.

How To Submit The Online Examination:

- Log into [www.GSTTI.com](http://www.GSTTI.com).
- Enter your email address and your password.
- Click link to take online exam.
- Answer questions.
- Submit answers and completed survey.
- Verify PTIN.
- Get certificate by email within 24 hours.
- We electronically notify the IRS and/or CTEC that you earned CPE course credits.

The exam has no time limit, and is open book, so you are allowed to look up answers in the text we provide. You do not need to finish the exam in one continuous sitting as all of the answers you enter online are automatically saved. After you submit the online exam to us you will receive a pass/fail message.





If you should fail the exam on your first attempt, you will have the option to re-take the exam at no additional cost. If you score less than 70%, a message will be displayed at the bottom of the page along with a list of incorrect questions. You have unlimited attempts to pass an exam.

Upon successful completion, we will e-mail you a Certificate of Completion and notify the IRS and (if applicable) CTEC that you earned CPE credits from Golden State Tax Training Institute, Inc.

We wish you every success and thank you for choosing Golden State Tax Training Institute, Inc.



## Understanding the Icons Used in this Book

	<b>Important:</b> Update or change
 Tip	<b>Tip:</b> Significant information
	<b>Note:</b> Additional information
	<b>Review Question:</b> Learning opportunity

Golden State Tax Training Institute, Inc. is an approved education provider for the California Tax Education Council (CTEC) and the Internal Revenue Service (IRS). Our CTEC provider number is 2040 and can be verified at [www.CTEC.org](http://www.CTEC.org). Our IRS provider number is P619F and can be verified on the IRS list of [Approved Continuing Education Providers](#).





## Professional Responsibilities, Ethics, Penalties

Federal tax law starts with the Internal Revenue Code (IRC), enacted by Congress in Title 26 of the United States Code (26 U.S.C.). Formally called the Internal Revenue Code of 1986, the IRC is the domestic portion of Federal statutory tax law in the United States. It is organized topically, into subtitles and sections, covering income tax, payroll taxes, estate taxes, gift taxes, and excise taxes; as well as procedure and administration. Treasury regulations (26 C.F.R.), also referred to as Federal tax regulations, begin where the Internal Revenue Code (IRC) leaves off by providing the official interpretation of the IRC by the U.S. Department of the Treasury.

Revenue Rulings are public administrative rulings by the Internal Revenue Service (IRS) in the United States Department of the Treasury of the United States Federal government that apply the law to particular factual situations. A Revenue Ruling can be relied upon as precedent by all taxpayers.

The Office of Professional Responsibility (OPR) and the Return Preparer Office (RPO) generally are responsible for administering and enforcing the regulations governing practice before the IRS. The OPR supports the IRS's strategy to enhance enforcement of the tax law by ensuring that tax professionals adhere to tax practice standards and follow the law. The OPR is the governing body responsible for interpreting and applying the Regulations Governing Practice before the Internal Revenue Service (Treasury Department Circular 230). The OPR has exclusive responsibility for practitioner conduct and discipline, including instituting disciplinary proceedings and pursuing sanctions. It functions independently of the Title 26 enforcement components of the IRS. The Return Preparer Office (RPO) is responsible for matters related to the authority to practice, including acting on applications for enrollment and administering competency testing and continuing professional education.

OPR continuously investigates cases involving tax professionals not in compliance with their ethical obligations. Recently, OPR disbarred a former CPA and former attorney in Massachusetts. He was disbarred for having his CPA license revoked and for falsely claiming to be a CPA on power of attorney forms submitted to the IRS. In an Initial Decision and Order, the ALJ determined that Edgar's "conduct demonstrates he does not have the integrity or character to be trusted representing taxpayers before the IRS." The Decision further stated: "The only appropriate sanction therefore is disbarment." The Treasury Appellate Authority concurred finding the disciplinary proceeding was brought within the statute of limitations; that Edgar had given false and misleading information to a Treasury employee during the IRS examination process; and, that submitting false powers of attorney to the IRS was a "serious violation[s] that warrants a severe sanction."<sup>(1)</sup>

Also, an Enrolled Agent (EA) was disbarred for stealing a client's tax payments and for preparing tax returns with false deductions for multiple clients. In a Final Agency Decision, the Administrative Law Judge disbarred the EA for misappropriating client payments intended for the IRS in furtherance of an offer in compromise, and for preparing multiple returns containing Schedule C deductions for which she could not produce substantiation on audit. The EA was engaged to represent a taxpayer in a collection matter. The client gave the EA two money orders totaling \$1,500 to forward to the IRS along with an offer in compromise for delinquent taxes. It was found by the ALJ that the EA altered, endorsed and cashed the money orders for her own personal use, which are acts of willful incompetent and disreputable conduct under Circular 230.

The ALJ also found that the EA prepared Forms 1040 for seven clients claiming Schedule C deductions that were unsubstantiated and unsupported. It was found that the EA failed to exercise due diligence in preparing the Schedule C's, thereby violating multiple due diligence provisions contained in Circular 230. The EA also failed to respond to the administrative complaint and the motion for default judgment. The ALJ determined that because the EA failed to respond either to the complaint or to the motion for default judgment, she was deemed to admit all the allegations in the complaint, and to not oppose the default motion.<sup>(2)</sup>

In another case, a tax preparer based in California was charged in a 33-count indictment for using stolen identities to file fraudulent tax returns with the Internal Revenue Service (IRS). According to the indictment as well as documents and information provided to the court, the tax preparer directed the IRS to deposit the refunds into bank accounts in the names of her relatives and associates. For some actual tax-preparation clients, Lozano claimed a larger refund



from the IRS than she represented to her clients. She directed the IRS to deposit the excess amounts into a bank account she controlled without her clients' knowledge. She was sentenced to serve 175 months in prison for her role in two stolen identity refund fraud schemes. In addition to the terms of prison imposed, a U.S. District Court Judge ordered the tax preparer to serve three years of supervised release and to pay \$1.479 million in restitution to the IRS and HUD. <sup>(2)</sup>

## Practice Before the IRS

Practice before the Internal Revenue Service includes presenting to the IRS or any of its officers or employees all matter relating to a client's rights, privileges or liabilities. Practice before the IRS covers all matters relating to any of the following: <sup>(3)</sup>

- Communicating with the IRS for a taxpayer regarding the taxpayer's rights, privileges, or liabilities under laws and regulations administered by the IRS.
- Representing a taxpayer at conferences, hearings, or meetings with the IRS.
- Preparing and filing documents, including tax returns, with the IRS for a taxpayer.
- Providing a client with written advice which has a potential for tax avoidance or evasion.

Furnishing information at the request of the IRS or appearing as a witness for the taxpayer is not practice before the IRS.

Some examinations are handled entirely by mail. Examinations not handled by mail can take place in the taxpayer's home, his or her place of business, an Internal Revenue office, or the office of his or her authorized representative. If the time, place, or method is not convenient for the taxpayer, the examiner will try to work out something more suitable. However, the IRS makes the final determination of when, where, and how the examination will take place.

Throughout the examination, the taxpayer can act on his or her own behalf or have someone represent him or her or accompany him or her. If the taxpayer filed a joint return, either he or she or his or her spouse, or both, can meet with the IRS. The person representing the taxpayer can be any Federally authorized practitioner, including an attorney, a certified public accountant, an enrolled agent (a person enrolled to practice before the IRS), an enrolled actuary, or the person who prepared the return and signed it as the preparer.

If the taxpayer wants someone to represent him or her in his or her absence, he or she must furnish that person with proper written authorization. The taxpayer can use [Form 2848 - Power of Attorney and Declaration of Representative](#) or any other properly written authorization. If the taxpayer wants to consult with an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, he or she should make arrangements with that person to be available for the interview.

The following individuals are subject to the Regulations contained in Circular 230. However, any individual who is recognized to practice (a recognized representative) must be designated as the taxpayer's representative and file a written declaration with the IRS stating that he or she is authorized and qualified to represent a particular taxpayer. [Form 2848 - Power of Attorney and Declaration of Representative](#) can be used for this purpose.

**Appraisers** - Any individual who prepares appraisals supporting the valuation of assets in connection with one or more Federal tax matters is subject to the regulations contained in Circular 230. Appraisers have no representation rights but may appear as witnesses on behalf of taxpayers.

**Attorneys** - Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the attorney is currently qualified as an attorney and is authorized to represent the party or parties. Notwithstanding the preceding sentence, attorneys who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under Circular 230 Section 10.37, but their rendering of this advice is practice before the Internal Revenue Service.

**Certified public accountants (CPAs)** - Any CPA who is not currently under suspension or disbarment from practice before the IRS and who is duly qualified to practice as a CPA in any state, possession, territory, commonwealth, or





the District of Columbia may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties. Notwithstanding the preceding sentence, certified public accountants who are not currently under suspension or disbarment from practice before the Internal Revenue Service are not required to file a written declaration with the IRS before rendering written advice covered under Circular 230 Section 10.37, but their rendering of this advice is practice before the Internal Revenue Service.

**Enrolled agents** - Any enrolled agent in active status who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS.

**Enrolled retirement plan agents** - Any enrolled retirement plan agent in active status who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. The practice of enrolled retirement plan agents is limited to certain Internal Revenue Code sections that relate to their area of expertise, principally those sections governing employee retirement plans.

**Enrolled actuaries** - Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS. The practice of enrolled actuaries is limited to certain Internal Revenue Code sections that relate to their area of expertise, principally those sections governing employee retirement plans.

**Others** - Any individual qualifying under Circular 230 Section 10.5(e) or Section 10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

**Low Income Taxpayer Clinic Student Interns** - Under certain circumstances, a student who is supervised by a practitioner may request permission to represent another person before the IRS.

**Unenrolled return preparers** - An unenrolled return preparer is an individual other than an attorney, CPA, enrolled agent, enrolled retirement plan agent, or enrolled actuary who prepares and signs a taxpayer's return as the paid preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return.

Unenrolled return preparers may represent taxpayers only before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) and only during an examination of the tax returns they prepared and signed prior to December 31, 2015. Unenrolled return preparers may not represent taxpayers before appeals officers, revenue officers, counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury. Unenrolled return preparers may not execute closing agreements, extend the statutory period for tax assessments or collection of tax, execute waivers, or sign any document on behalf of a taxpayer.

As of January 1, 2016, only unenrolled return preparers who hold an Annual Filing Season Program (AFSP) Record of Completion for **both** the tax return year (2015 or thereafter) under examination and the year the examination is conducted may represent under the following conditions:

- Unenrolled return preparers may represent taxpayers only before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) and only during an examination of the taxable year or period covered by the tax returns they prepared and signed.
- Unenrolled return preparers may not represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury.
- Unenrolled return preparers may not execute closing agreements, extend the statutory period for tax assessments or collection of tax, execute waivers, or sign any document on behalf of a taxpayer.

If an unenrolled return preparer does not meet the requirements for limited representation, the taxpayer may authorize the unenrolled return preparer to inspect and/or request his or her tax information by filing [Form 8821 - Tax Information Authorization](#). Completing Form 8821 will not authorize the unenrolled return preparer to represent the taxpayer before the IRS.



**Other individuals who may serve as representatives** - Because of their special relationship with a taxpayer, the following individuals can represent the specified taxpayers before the IRS, provided they present satisfactory identification and, except in the case of an individual described below, proof of authority to represent the taxpayer: <sup>(3)</sup>

- **An individual.** An individual can represent him or herself before the IRS and does not have to file a written declaration of qualification and authority.
- **A family member.** An individual can represent members of his or her immediate family. Immediate family includes a spouse, child, parent, brother, or sister of the individual.
- **An officer.** A bona fide officer of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group can represent the corporation, association, or organized group. An officer of a governmental unit, agency, or authority, in the course of his or her official duties, can represent the organization before the IRS.
- **A partner.** A general partner may represent the partnership before the IRS.
- **An employee.** A regular full-time employee can represent his or her employer. An employer can be, but is not limited to, an individual, partnership, corporation (including a parent, subsidiary, or other affiliated corporation), association, trust, receivership, guardianship, estate, organized group, governmental unit, agency, or authority.
- **A fiduciary.** A fiduciary (trustee, executor, personal representative, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer, not as a representative.



### Review Question 1

Which of the following statements is false regarding a taxpayer who wants someone to represent him or her in their absence before a revenue officer at an appeal with the IRS?

- A. The taxpayer must furnish that representative with written authorization on *Form 2848 - Power of Attorney and Declaration of Representative*, or any other properly written authorization
- B. The representative can be an attorney, a certified public accountant, or an enrolled agent
- C. Examinations not handled by mail can take place in the office of the taxpayer's authorized representative
- D. The representative can be anyone who helped the taxpayer prepare the return

See [Review Feedback](#) for answer.

## Restrictions

Practitioners are restricted from engaging in certain practices: <sup>(3)</sup>

- A practitioner must not unreasonably delay the prompt disposition of any matter before the IRS.
- A practitioner must not knowingly, directly or indirectly:
  - Accept assistance from, or assist, any person who is under disbarment or suspension from practice before the IRS if the assistance relates to matters considered practice before the IRS.
  - Accept assistance from any former government employee where provisions of Circular 230 or any Federal law would be violated.
- A practitioner who is a notary public and is employed as counsel, attorney, or agent in a matter before the IRS, or has a material interest in the matter, cannot engage in any notary activities related to that matter.
- Practitioners must not endorse or otherwise negotiate (cash) any refund check (including directing or accepting payment by any means, electronic or otherwise, in an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to the taxpayer.

Generally, individuals lose their eligibility to practice before the IRS in the following ways: <sup>(3)</sup>

- Not meeting the requirements for renewal of enrollment (such as continuing professional education).
- Requesting to be placed in inactive retirement status.
- Being suspended or disbarred by the Office of Professional Responsibility for violating the regulations governing practice before the IRS.

Any practitioner or unenrolled return preparer may be disbarred, censured or suspended from practice before the IRS for incompetence or disreputable conduct.



The following list contains examples of conduct that is considered disreputable:

- Being convicted of any criminal offense under the revenue laws or of any offense involving dishonesty or breach of trust.
- Knowingly giving false or misleading information in connection with Federal tax matters or participating in such activity.
- Soliciting employment by prohibited means as discussed in [Section 10.30 of Circular 230](#).
- Willfully failing to file a Federal tax return, evading or attempting to evade any Federal tax or payment, or participating in such actions.
- Misappropriating, or failing to properly and promptly remit, funds received from clients for payment of taxes or other obligations due the United States.
- Directly or indirectly attempting to influence the official action of IRS employees by the use of threats, false accusations, duress, or coercion, or by providing gifts, favors, or any special inducements.
- Being disbarred or suspended from practice as an attorney, CPA, public accountant, or actuary, by the District of Columbia or any state, possession, territory, commonwealth, or any Federal court, or any Federal agency, body, or board.
- Knowingly aiding and abetting another person to practice before the IRS during a period of suspension, disbarment, or ineligibility of that other person.
- Using abusive language, making false accusations and statements knowing them to be false, circulating or publishing malicious or libelous matter, or engaging in any contemptuous conduct in connection with practice before the IRS.
- Giving a false opinion knowingly, recklessly, or through gross incompetence; or following a pattern of providing incompetent opinions in questions arising under the Federal tax laws.

The Office of Professional Responsibility may censure or institute proceedings to censure, suspend or disbar any attorney, CPA, or enrolled agent who has violated Circular 230. A practitioner will be given the opportunity to demonstrate compliance with the rules before any disciplinary action is taken.

Unenrolled return preparers may only represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination of the taxable year or period covered by the tax return they prepared and signed. Unenrolled return preparers cannot represent taxpayers, regardless of the circumstances requiring representation, before appeals officers, revenue officers, counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury. Unenrolled return preparers cannot execute closing agreements, extend the statutory period for tax assessments or collection of tax, execute waivers, execute claims for refund, or sign any document on behalf of a taxpayer.

The Return Preparer Office can grant enrollment to practice before the IRS to an applicant who demonstrates special competence in tax matters by passing a 3-part written examination administered by the IRS. Enrollment also can be granted to an applicant who qualifies because of past service and technical experience in the IRS. In either case, certain application forms must be filed. Additionally, an applicant must not have engaged in any conduct that would justify suspension or disbarment from practice before the IRS. Applicants can apply to take the special enrollment examination by filing [Form 2587- Application for Special Enrollment Examination](#). Form 2587 can be filed online, by mail, or by fax.

Individuals who have passed the 3-part examination or are applying on the basis of past service and technical experience with the IRS can apply for enrollment by filing [Form 23 - Application for Enrollment to Practice Before the Internal Revenue Service](#), or [Form 23-EP - Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent](#). The application must include a check or money order in the amount of the fee shown on Form 23 or Form 23-EP. Alternatively, payment may be made electronically pursuant to instructions on the forms.

An individual may apply as an enrolled actuary on the basis of past employment with the IRS and technical experience by filing [Form 5434 - Application for Enrollment](#), with the Joint Board for the Enrollment of Actuaries. The application must include a check or money order in the amount of the fee shown on Form 5434.

An enrollment card will be issued to each individual whose enrollment application is approved. The individual is enrolled until the expiration date shown on the enrollment card or certificate. To continue practicing beyond the expiration date, the individual must request renewal of the enrollment by filing [Form 8554 - Application for Renewal of](#)



Enrollment to Practice Before the Internal Revenue Service, or Form 8554-EP - Application for Renewal of Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

### Limited Practice Based on Relationship to the Taxpayer

An individual may represent him or herself before the IRS by presenting satisfactory identification. The individual does not have to file a written declaration of authority. Because of their special relationship with a taxpayer, unenrolled individuals can represent the specified taxpayers before the IRS without having actually prepared the tax return in question. The following must provide satisfactory identification and documented authority (e.g., [Form 2848 - Power of Attorney and Declaration of Representative](#)) to represent the taxpayer: <sup>(4)</sup>

- **A family member** - an individual may represent members of his or her immediate family. Immediate family generally means a spouse, child, parent, brother, or sister of the individual. In other cases, the determination of whether an individual is a member of a taxpayer's immediate family can be complex, and the Office of Associate Chief Counsel (General Legal Services) or the Office of Associate Chief Counsel (Procedure and Administration) should be consulted.
- **An officer** - a bona fide officer of a corporation (including a parent subsidiary or other affiliated corporation), association or organized group may represent the corporation, association, or organized group. An officer of a governmental unit, agency, or authority in the course of his or her official duties, may represent the organization before the IRS.
- **A partner** - a general partner may represent the partnership before the IRS.
- **An employee** - a regular full-time employee may represent his or her employer. An employer may be, but is not limited to, an individual, partnership, corporation (including a parent, subsidiary, or other affiliated corporation), association, trust, receivership, guardianship, estate, organized group, governmental unit, agency, or authority.
- **A fiduciary** (trustee, executor, administrator, receiver, or guardian) - a fiduciary stands in the position of a taxpayer and acts as the taxpayer, not as a representative.

### Power of Attorney

The taxpayer has the right to represent him or herself or have someone represent him or her before the IRS in connection with a Federal tax matter. The taxpayer's representative must be an individual authorized to practice before the IRS. If the taxpayer wants someone to represent him or her before the IRS, he or she must submit a power of attorney with the IRS office where he or she wants the representative to act for him or her. The [Form 2848 - Power of Attorney and Declaration of Representative](#), can be used for this purpose. The taxpayer's signature on Form 2848 allows the individual or individuals named to represent him or her before the IRS and to receive his or her tax information for the matter(s) and tax year(s)/period(s) specified on the Form 2848.

Except as specified in other IRS guidance, the power attorney authorizes the listed representative(s) to receive and inspect confidential tax information and to perform all acts (that is, sign agreements, consents, waivers or other documents) that a taxpayer can perform with respect to matters described in the power of attorney. Representatives are not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative or any firm or other entity with whom the representative is associated) issued by the government in respect of a Federal tax liability. Additionally, unless specifically provided in the power of attorney, this authorization does not include the power to substitute or add another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party.

A power of attorney is not required when the third party is not dealing with the IRS as the taxpayer's representative. The following situations do not require a power of attorney: <sup>(3)</sup>

- Providing information to the IRS.
- Authorizing the disclosure of tax return information through [Form 8821 - Tax Information Authorization](#), or other written or oral disclosure consent.
- Allowing the IRS to discuss return information with a third party via the checkbox provided on a tax return or other document.
- Allowing a tax matters partner or person (TMP) to perform acts for the partnership.
- Allowing the IRS to discuss return information with a fiduciary.



The IRS will accept a power of attorney other than Form 2848 provided the document satisfies the requirements for a power of attorney.

### Practice Before the Department

Per USC [Section 330](#), Practice before the Department, subject to [Section 500 of Title 5](#), the Secretary of the Treasury may:

1. Regulate the practice of representatives of persons before the Department of the Treasury; and
2. Before admitting a representative to practice, require that the representative demonstrate:
  - a. Good character.
  - b. Good reputation.
  - c. Necessary qualifications to enable the representative to provide to persons valuable service.
  - d. Competency to advise and assist persons in presenting their cases.

After notice and opportunity for a proceeding, the Secretary may reprimand, suspend or disbar from practice before the Department, or censure, a representative who:

1. Is incompetent.
2. Is disreputable.
3. Violates regulations prescribed under this section.
4. With intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.

The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.

After notice and opportunity for a hearing to any appraiser, the Secretary may:

1. Provide that appraisals by such appraiser shall not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service.
2. Bar such appraiser from presenting evidence or testimony in any such proceeding.

### Confidentiality Privileges

With the introduction of the Federal tax practitioner privilege under Internal Revenue Code (IRC) [Section 7525](#), the attorney-client privilege has become of major importance to accountants, enrolled agents and other tax practitioners because the IRC [Section 7525](#) privilege is, to the extent it applies, coextensive with the attorney-client privilege and has the same limitations. Generally, with respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any “Federally authorized tax practitioner” to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney. The privilege may only be asserted in any noncriminal tax matter before the Internal Revenue Service and any noncriminal tax proceeding in Federal court brought by or against the United States.

The term “Federally authorized tax practitioner” means any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under [Section 330 of title 31](#), United States Code. The term “tax advice” means advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice.

The privilege shall not apply to any written communication which is between a “Federally authorized tax practitioner” and any person, any director, officer, employee, agent, or representative of the person, or any other person holding a capital or profits interest in the person in connection with the promotion of the direct or indirect participation of the person in any tax shelter.



## Sarbanes-Oxley Act of 2002

On July 30, 2002, President Bush signed into law the [Sarbanes-Oxley Act of 2002](#), which he characterized as "the most far reaching reforms of American business practices since the time of Franklin Delano Roosevelt." The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the Public Company Accounting Oversight Board (PCAOB) to oversee the activities of the auditing profession.

The Sarbanes-Oxley Act requires that auditors of U.S. public companies be subject to external and independent oversight. Previously the profession was self-regulated. The PCAOB is a non-profit corporation established by Congress to oversee the audits of public companies to protect investors and the public interest by promoting accurate, independent audit reports. The PCAOB also monitors the audits of brokers and dealers, including compliance reports filed pursuant to Federal securities laws. The U.S. Securities and Exchange Commission (SEC) has authority over the PCAOB, including its rules, standards and budget. <sup>(5)</sup>

## Rules for Tax Preparers – Circular 230

This section is designed to help you understand your ethical obligations as a paid tax preparer. Because tax preparers are trusted by their clients to comply with tax laws, tax preparers are required to comply with the ethical standards of [Treasury Department Circular 230 – Rules for Tax Preparers](#). <sup>(6)</sup>

Who exactly is a tax return preparer? Under USC [Section 7701\(a\)\(36\)](#), a tax return preparer is any person who prepares for compensation, or employs others to prepare for compensation, all or a substantial portion of any tax return or claim for refund under the IRC. The IRS recognizes attorneys, CPAs, enrolled actuaries, enrolled retirement plan agents, enrolled agents and all others paid to prepare returns as paid tax return preparers subject to the ethics rules.

However, a person shall not be a tax return preparer merely because such he or she: <sup>(7)</sup>

- Furnishes typing, reproducing, or other mechanical assistance.
- Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed.
- Prepares as a fiduciary a return or claim for refund for any person.
- Prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

Enforcement of the rules is administered by the Office of Professional Responsibility (OPR) within the IRS. OPR's organizational structure includes three major segments: Office of the Director, Legal Analysis Branch, and Operations Management Branch.

These branches of the OPR are committed to: <sup>(8)</sup>

- Independent, fair and equitable treatment of all tax practitioners consistent with their Title 31 authority and principles of due process.
- Rendering fair and independent determinations regarding alleged misconduct in violation of Circular 230 - Regulations Governing Practice before the Internal Revenue Service.
- Educating/maintaining tax professionals' knowledge of relevant Circular 230 provisions.
- Providing guidance and feedback to field/agency sources regarding essential referral criteria for each relevant Circular 230 provision.
- Strengthening partnerships with other parts of the IRS and with external practitioner organizations.
- Developing procedures that ensure timely case resolution.
- Developing policies and regulations that ensure fair and equitable disposition of Circular 230 cases.
- Developing and implementing proactive strategies for identifying violations of Circular 230.



Examples of misconduct typically referred to OPR include, but are not limited to:

- Inaccurate or unreasonable entries/omissions on tax returns, financial statements and other documents.
- A lack of due diligence exercised by the practitioner.
- A willful attempt by the practitioner to evade the payment/assessment of any Federal tax.
- Cashing, diverting or splitting a taxpayer's refund by any means, electronic or otherwise.
- Patterns of misconduct involving multiple years, multiple clients or inappropriate/unprofessional conduct demonstrated to multiple IRS employees.
- Potential conflict of interest situations, such as representation of both spouses who have a joint liability or when representation is affected by competing interests of the practitioner.
- Any willful violation of Circular 230 provisions.

The Treasury Department Circular 230 contains ethics rules governing the recognition of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service. Circular 230 is the body of regulations promulgated under the enabling statute found at Title 31, United States Code Section 330. This statute and the body of regulations are the source of the OPR's authority. Circular 230 defines "practice" and who may practice before the IRS; describes a tax professional's duties and obligations while practicing before the IRS; authorizes specific sanctions for violations of the duties and obligations; and, describes the procedures that apply to administrative proceedings for discipline.

The Circular 230 is divided into five distinct subparts:

- *Subpart A* - sets forth rules relating to the authority to practice before the Internal Revenue Service.
- *Subpart B* - prescribes the duties and restrictions relating to such practice.
- *Subpart C* - prescribes the sanctions for violating the regulations.
- *Subpart D* - contains the rules applicable to disciplinary proceedings.
- *Subpart E* - contains general provisions relating to official records.

The Office of Professional Responsibility shall generally have responsibility for matters related to practitioner conduct and shall have exclusive responsibility for discipline, including disciplinary proceedings and sanctions.

Circular 230 discipline includes Censure (essentially a public reprimand), Suspension of practice privileges and Disbarment. A suspension can be for a fixed term or may be indefinite, and a practitioner must request and be granted reinstatement by the OPR before practice privileges are restored. When a practitioner is suspended for a fixed term, the individual may not petition to be reinstated to practice before the end of the term. When a practitioner is disbarred, s/he may not petition for reinstatement for five years.

The OPR also may propose a monetary penalty on any practitioner who engages in conduct subject to sanction. The monetary penalty may be proposed against the individual or a firm, or both, and can be in addition to any Censure, Suspension or Disbarment. The amount of the penalty may be up to the amount of gross income derived or to be derived from the conduct giving rise to the penalty.

If formal discipline is not appropriate, the OPR may issue a private reprimand or a cautionary "soft letter." The "soft letter" typically advises a practitioner of allegations and warns against noncompliance with obligations under Circular 230 but does not reach a conclusion as to whether a violation was actually committed.



### Review Question 2

A tax return preparer must complete the paid preparer's area of the return if which of the following is true?

- A. The taxpayer prepares his own or her own return
- B. The individual was paid to prepare, assist in preparing, or review the tax return
- C. The individual volunteers to complete the return for no cost
- D. An employee prepares a tax return for his employer by whom he is regularly and continuously employed

See [Review Feedback](#) for answer.



## Subpart A

### Rules Governing Authority to Practice

Subpart A contains rules governing attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the IRS. Subpart A also outlines the requirements for annual continuing professional education.

### Eligibility

In order to be eligible to become an enrolled agent or enrolled retirement plan agent, the applicant must:

- Be 18 years of age or older.
- Demonstrate competence in tax matters.
- Possess a current preparer tax identification number (PTIN).
- Has not engaged in any conduct justifying suspension or disbarment.

### Application

In order to become an enrolled agent or enrolled retirement plan agent, the applicant must:

- Submit an application to the IRS.
- Pay a non-refundable registration fee.
- Pass an examination.
- Pass certain suitability checks.

Suitability checks include verification on filing personal and/or business tax returns, payment of any tax liabilities and inquiry regarding any conduct which would justify suspension or disbarment from practice. Upon application completion and approval, the IRS will issue an enrollment registration card or certificate. This will include a preparer tax identification number (PTIN) which must be included next to your signature on all returns that you prepare. It is your IRS license to prepare taxes.

If the applicant does not pass the tax compliance or suitability check, the applicant will not be issued an enrollment card or certificate. The applicant will be informed in writing as to the reason(s) for any denial of an application. The applicant may, within 30 days after receipt of the notice of denial of the application, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, guidance, or other appropriate guidance.

### Attorneys

People with this credential are licensed by state courts or their designees, such as the state bar. Generally, requirements include completion of a degree in law, passage of an ethics and bar exam and on-going continuing professional education. Attorneys can offer a range of services; some attorneys specialize in tax preparation and planning.

### Enrolled Agents

People with this credential are licensed by the IRS and specifically trained in Federal tax planning, preparation and representation. Enrolled agents hold the most expansive license the IRS grants and must pass a suitability check, as well as a three-part Special Enrollment Examination, a comprehensive 3-part exam that covers individual tax, business tax and representation issues.

An individual should follow these steps to become an enrolled agent:

1. Obtain a Preparer Tax Identification Number (PTIN).
2. Apply to take the Special Enrollment Examination (SEE).
3. Achieve passing scores on all 3 parts of the SEE:
  - a. Review old SEE questions and answers.
  - b. Review the SEE Candidate Information Bulletin.





4. Apply for enrollment and pay enrollment fee electronically at Pay.gov or by downloading [Form 23 - Application for Enrollment to Practice Before the Internal Revenue Service](#) and mailing the completed form and a check to the IRS.
5. Pass a tax compliance check to ensure that he or she has filed all necessary tax returns and there are no outstanding tax liabilities. This check is conducted on the individual's behalf after submission of Form 23.



Enrolled agents must obtain 72 hours of continuing professional education (CPE) every three years. A minimum of 16 hours must be earned per year, two of which must be on ethics. Enrolled agents must use an IRS approved CE provider. Former IRS employees may be granted enrollment based on past service and technical experience in the IRS without having to take the SEE.

## Term and Renewal

Anyone who prepares or assists in preparing Federal tax returns for compensation must have a valid preparer tax identification number (PTIN) before preparing returns. All enrolled agents must also have a PTIN. PTINs must be renewed by December 31<sup>st</sup>. Additionally, enrolled agents must renew their credentials with the IRS between November 1 and January 31 of every subsequent third year according to the last number of the individual's Social Security number. Enrolled retirement plan agents must renew their status between April 1 and June 30 of every third year subsequent to their enrollment. Upon renewal and payment of a renewal fee, a new card or certificate will be issued. Changes of address must be reported to the IRS within 60 days of the address change.

Failure to receive renewal notification from the IRS does not justify the practitioner failure to satisfy renewal requirements. Forms for renewal are available by written request, published bulletins and on the IRS webpage ([www.irs.gov/for-Tax-Pros](http://www.irs.gov/for-Tax-Pros)).

An Enrolled Agent will be automatically classified as "inactive" if he or she fails to:

- Meet the CPE requirements for his or her EA license renewal.
- Submit his or her enrolled agent license renewal by the due date.
- Meet any other condition of renewal.

The Office of Professional Responsibility will notify the EA by first class mail. The notice will describe the reason for denial of renewal. An EA will have 60 days from the date of the notice to reply and provide information for reconsideration.

An enrolled individual will be placed on the roster of inactive enrolled individuals for a period of three years, if he or she:

- Fails to respond timely to the notice of noncompliance with the renewal requirements.
- Fails to file timely the application for renewal.
- Does not satisfy the requirements of eligibility for renewal.

The enrolled individual must file an application for renewal and satisfy all requirements for renewal after being placed in inactive status. Otherwise, at the conclusion of the next renewal cycle, he or she will be removed from the roster and the enrollment status will be terminated.

An EA can request to be placed on inactive retirement status when he or she fills out his or her renewal [Form 8554 - Application for Renewal of Enrollment to Practice Before the Internal Revenue Service](#). Specifically, he or she marks a checkbox in Part 1 of the Application for Renewal of Enrollment. The checkbox states "I want approval to remain or be placed into Inactive Retirement status."

The cost to become inactive or remain on inactive status is the same as the cost to be on active status. An inactive EA must still pay the renewal fee every 3 years however no CPE is required while in inactive status.

Enrolled individuals who request to be placed in an inactive retirement status will be ineligible to practice before the IRS. They must continue to adhere to all renewal requirements. They can be reinstated to active enrollment status by filing an application for renewal and providing evidence that they have completed the required continuing professional education hours for the enrollment cycle or registration year.



Generally speaking, there is no advantage to selecting inactive status unless the enrolled individual plans to remain inactive for 6 or more years. If he or she decides to return to active status say after 4 year, he or she has to complete 72 hours to reactivate. Then in 2 years the individual has to submit 72 hours to renew his or her license. So the enrolled individual has to remain inactive for more than 6 years in order to skip a cycle of CPE requirements.

### Certified Public Accountants

People with this credential are licensed by state boards of accountancy, the District of Columbia, and U.S. territories, and have passed the Uniform CPA Examination. They also must meet education, experience, and good character requirements established by their boards of accountancy. In addition, CPAs must comply with ethical requirements as well as complete specified levels of continuing professional education in order to maintain an active CPA license. CPAs can offer a range of services; some CPAs specialize in tax preparation and planning.

Generally, an individual has three requirements for licensure: <sup>(9)</sup>

1. Education.
2. Exam or Uniform Certified Public Accountant Examination.
3. Experience.

To obtain the required body of knowledge and to develop the skills and abilities needed to be successful CPAs, students should complete 150 semester hours of education. Many states/jurisdictions now require or will require 150 semester hours of education for obtaining the CPA certification. Colleges and universities in these states/jurisdictions determine the curriculum for pre-licensure education of CPAs; it typically features a good balance of accounting, business, and general education.

In general, state boards require the following:

- A total of 150 semester credits from a college or university whose accreditation is accepted by the state (Colleges and universities typically offer a curriculum designed to meet the 150-credit requirement).
- A minimum of a bachelor's degree.
- A specified number of accounting courses.
- A specified number of business courses.

The uniform CPA examination is a computer-based format consisting of four sections: <sup>(9)</sup>

- Auditing and Attestation (AUD).
- Business Environment and Concepts (BEC).
- Financial Accounting and Reporting (FAR).
- Regulation (REG).

The exam is the same regardless of location taken. The passing score is 75 on a 0-99 scale. The question types include multiple choice, simulation, and written communication. Eligibility to sit for the exam depends on state requirements.

Many states require a candidate to have one to two years of experience under a CPA. Additional requirements vary based on the candidate's education, employer(s) and type of work. CPA licenses give the individual the right to practice public accounting. Some states require an Ethics exam and the individual must comply with rules of professional conduct.

### Continuing Professional Education Requirement - CPA

To maintain his or her license, a CPA typically must complete 40 hours (varies by state) of continuing professional education (CPE) per year. Types of eligible CPE hours vary based on jurisdiction. Subjects also vary on type or license and area of employment. Many jurisdictions may require ethics training and compliance. The National Association of State Boards of Accountancy (NASBA) Regulatory Compliance Services division offers several programs that assist state boards and their licensees by determining high quality CPE providers. For more information about the state board of accountancy in each of the 55 jurisdictions visit the [NASBA website](#).



Documentation of CPE is not required but should be maintained. The member is responsible for retaining any documentation that may be required. The reporting period begins the calendar year after joining the American Institute of Certified Public Accountants (AICPA). There is a two-month grace period immediately following the reporting period. Hours credited toward a deficiency may not be counted toward the reporting period in which they are taken. Qualifying programs are those programs which contribute to the member's professional competence and are formal programs. No specific subject areas are required. Examples of qualifying programs are in-house training courses, trade association conferences, self-study programs or college and university classes. Members bear primary responsibility of documenting compliance with CPE requirements.

For each program the member should be able to document the following: <sup>(10)</sup>

- Sponsor.
- Title and description of content.
- Date(s).
- Location.
- Number of CPE contact hours.

AICPA members in the following categories are automatically exempted from AICPA CPE Requirements: <sup>(10)</sup>

- Retired and do not hold themselves out as CPAs to third parties.
- Temporarily Left the Work Force and do not hold themselves out as CPAs to third parties.
- Unemployed and do not hold themselves out as CPAs to third parties.
- Members who have formally placed their CPA certificate/license in 'inactive' status with the State Board of Accountancy and do not hold themselves out as CPAs to third parties.

AICPA members may request a waiver for AICPA membership CPE requirements if the member is unable to comply due to unique circumstances such as: <sup>(10)</sup>

- Health.
- Military Service.
- Extreme natural disasters (in circumstances where the State Board grants any exemption, reduction or other adjustment with regard to CPE requirements).
- Other similar circumstances that might prevent a member from complying with the CPE requirements.

For more information see the [Statement on Standards for Continuing Professional Education \(CPE\) Programs](#).

Members who place their licenses/certificate on inactive status with their state board of accountancy AND do not hold themselves out as CPAs are exempt from the AICPA's CPE requirement as long as their state board does not require CPE while on inactive status.

If a CPA is short of the required 40 CPE hours in the first year, he or she may be penalized with a citation and receive a fine. The individual would also be required to make up the hours to reach a minimum of 80 for the two-year reporting period. Penalties and fines vary and are determined by the individual's state board of accountancy. For more information about the state board of accountancy in each of the 55 jurisdictions visit the [NASBA website](#).

### Continuing Professional Education Requirement - EA

For an enrolled agent or enrolled retirement plan agent, during a three year enrollment cycle, 72 hours of continuing professional education, including 6 hours of ethics or professional conduct is required. At a minimum, 16 hours, including two hours of ethics or professional conduct, must be completed in any one year of the three year enrollment cycle.

When an enrolled agent is newly enrolled in the middle of an enrollment cycle, the individual must complete two hours of qualified continuing professional education for each month enrolled during the enrollment cycle. Two hours of qualified ethics or professional conduct is required for every year an enrolled agent becomes enrolled during an enrollment cycle.

Practitioner's records of completed continuing professional education must be retained for four years subsequent to the renewal date. If a practitioner did not complete his or her continuing professional education requirements, he or



she must fill out [Form 14392 - Continuing Education Waiver Request](#) and submit it to the IRS. The IRS states that all waiver requests will be processed within 90 days.

Once the waiver is approved, the practitioner still has to make up the hours in 2021 that he or she missed in 2020. However, the practitioner will still be able to have a valid PTIN and prepare taxes this year. He or she will not have problems with his or her PTIN renewal until 2021.

Reasons for requesting a waiver include:

- Health, which prevented, or will prevent, compliance with the continuing professional education requirements (supporting documentation such as medical certificate must be provided with request).
- Extended active military duty (supporting documentation such as military orders must be provided with request).
- Absence from the United States for an extended period of time due to employment or other reasons provided the individual does not practice before the Internal Revenue Service during such absence.
- Other compelling reasons, which will be considered on a case-by-case basis.

### Rules for Qualified Continuing Professional Education

- *For Certified Public Accountants*, CPE is required for CPAs to maintain their professional competence and provide quality professional services. CPAs are responsible for complying with all applicable CPE requirements, rules and regulations of state boards of accountancy, as well as those of membership associations and other professional organizations.
- *For enrolled agents*, the course must be a qualifying continuing professional education program in Federal tax and must be consistent with IRC and tax administration.
- *For enrolled retirement plan agents*, the course must be a qualifying continuing professional education program designed to enhance professional knowledge in qualified retirement plan matters and be a qualifying continuing professional education program consistent with the Internal Revenue Code and effective tax administration.
- *Annual Filing Season Program (AFSP)*, this program aims to recognize the efforts of non-credentialed return preparers who aspire to a higher level of professionalism. Tax practitioners meet the AFSP requirements by obtaining 18 hours of continuing education, including a six-hour Annual Federal Tax Refresher (AFTR) course with a comprehensive exam. Upon completion, the practitioner will receive an Annual Filing Season Program – Record of Completion from the IRS.

Formal qualified continuing professional education programs must require attendance and provide each attendee with a certificate of attendance, taught by a qualified instructor, include a written outline or educational materials, and it must satisfy the requirements established for a qualified continuing professional education program. Self-study programs are allowed provided that they require registration of the participants, measure the successful completion of the program by the participants with issuance of a certificate, provide educational materials, and satisfy the requirements established for a qualified continuing professional education program.

Continuing professional education providers and educational programs also must comply with specific requirements. Providers must be an accredited educational institution, must be licensed for continuing professional education, and be recognized by the IRS as an approved provider. Educational program offerings must be current, taught by qualified instructors, and include a means of evaluating content. Additionally, the provider must issue certificates to participants upon completion of the courses. The provider is also subject to record retention rules.

Golden State Tax Training Institute, Inc. is an approved education provider for the California Tax Education Council (CTEC). Our provider number is 2040 and can be verified at [www.CTEC.org](http://www.CTEC.org). Our IRS provider number is P619F and can be verified at the IRS list of [Approved Continuing Education Providers](#).

Category	IRS CPE Requirement	Credit Breakdown
Annual Filing Season Program (AFSP)	18 Hours per year - <b>Voluntary</b>	6 hours Annual Federal Tax Refresher (AFTR) Course* 2 hours of Ethics 10 hours of Federal Tax Law



Enrolled Agent	72 Hours (over 3-year enrollment cycle)	Minimum of 16 hours per year (2 of which must be on ethics)
Enrolled Retirement Plan Agent	72 Hours (over 3-year enrollment cycle)	Minimum of 16 hours per year (2 of which must be on ethics)

\*Former RTRPs can substitute the 3-hour Updates for the 6-hour AFTRC to earn their AFSP.

Table 1-1- IRS CE Requirements for Tax Professionals (2021)

### Annual Filing Season Program (AFSP)



AFSP participants will also be included in a public database of return preparers on the IRS website. The Directory of Federal Tax Return Preparers with Credentials and Select Qualifications will include the name, city, state, zip code, and credentials of all attorneys, CPAs, enrolled agents, enrolled retirement plan agents and enrolled actuaries with a valid PTIN, as well as all AFSP – Record of Completion holders.

Anyone who passed the Registered Tax Return Preparer test offered between November 2011 and January 2013 only needs to meet their original 15 hour continuing education requirement each year to obtain an AFSP – Record of Completion. Those who passed the RTRP test and certain other recognized national and state tests (including California and Oregon) are exempt from the six-hour Annual Federal Tax Refresher (AFTR) course with test.

The AFSP is voluntary. Anyone with a preparer tax identification number (PTIN) can prepare tax returns for compensation, but continuing professional education is encouraged for all tax return preparers.

To obtain an AFSP – Record of Completion a tax preparer must:

1. Take 18 hours of continuing education from IRS-Approved CE Providers, including:
  - a. A six (6) hour Annual Federal Tax Refresher (AFTR) course that covers filing season issues and tax law updates, as well as a knowledge-based comprehension test administered at the end of the course by the CE Provider;
  - b. Ten (10) hours of other federal tax law topics; **and**
  - c. Two (2) hours of ethics.
2. Have an active preparer tax identification number (PTIN).
3. Consent to adhere to specific practice obligations outlined in Subpart B and Section 10.51 of Treasury Department Circular No. 230.

In addition to being included in the public directory of tax return preparers, the AFSP – Record of Completion differentiates tax practitioners who have completed the program in the marketplace. The IRS launched a public education campaign encouraging taxpayers to select return preparers carefully and seek those with professional credentials or other select qualifications.

After PTIN renewal season began in October of 2020, a Record of Completion was generated to the tax preparer once all requirements have been met, including renewal of his or her PTIN for 2021 and consent to the Circular 230 obligations. If the tax preparer has an online PTIN account, he or she will receive an e-mail from TaxPro\_PTIN@irs.gov with instructions on how to sign the Circular 230 consent and receive his or her certificate in his or her online secure mailbox. If the tax preparer does not have an online PTIN account, he or she will receive a letter with instructions for completing the application process and obtaining his or her certificate.



The consent to certain Circular 230 requirements for the Annual Filing Season Program Record of Completion for 2021 is especially important for those who want to continue to have limited representation rights for clients whose returns they prepare after December 31, 2020.

Also, in 2016, there were changes to the representation rights of return preparers. Attorneys, CPAs, and enrolled agents will continue to be the only tax professionals with unlimited representation rights, meaning they can represent their clients on any matters including audits, payment/collection issues, and appeals. However, AFSP participants will have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including the Taxpayer Advocate Service.



PTIN holders without an AFSP – Record of Completion or other professional credential will only be permitted to prepare tax returns. They will not be allowed to represent clients before the IRS. The following tax return preparers who have successfully completed one of the following national or state tests are exempt from taking the Annual Federal Tax Refresher (AFTR) course:

- Anyone who passed the Registered Tax Return Preparer test administered by the IRS between November 2011 and January 2013.
- Established state-based return preparer program participants with current testing requirements such as return preparers who are active members of the Oregon Board of Tax Practitioners, California Tax Education Council, and/or Maryland State Board of Individual Tax Preparers. For example, The IRS has exempted California Registered Tax Preparers (CRTP) from having to take the Annual Federal Tax Refresher (AFTR) course and passing the course's competency examination to obtain a Record of Completion because they have already demonstrated their competency by passing a 60-hour qualifying education course and annually maintaining their continuing professional education. In addition, their California Tax Education Council (CTEC) education requirements will meet the IRS requirements. Therefore, a CRTP in good standing will have already met all of the IRS requirements of the AFSP and will have a simplified process to obtain a Record of Completion. Also, a CRTP was granted the authority to represent, before the IRS, clients whose returns the CRTP prepared, as long as the CRTP is properly registered with CTEC for both the year the tax return was prepared as well as the year the review takes place.
- SEE Part I Test-Passers: Tax practitioners who have passed the Special Enrollment Exam Part I within the past two years as of the first day of the upcoming filing season.
- VITA volunteers: Quality reviewers and instructors with active PTINs.
- Other accredited tax-focused credential-holders: The Accreditation Council for Accountancy and Taxation's Accredited Business Accountant/Advisor (ABA) and Accredited Tax Preparer (ATP) programs.

To be eligible for an AFSP – Record of Completion, a return preparer must complete and pass the AFTR course and obtain their other CPE by December 31<sup>st</sup> prior to the start of the tax season. As AFTR courses are offered by CPE providers, return preparers are subject to the schedule of courses offered by these providers. In no circumstance will the AFSP – Record of Completion be issued before a return preparer has registered or renewed their PTIN for the upcoming year.

## Instructors

It is possible to earn continuing professional education credits by serving as the instructor or discussion leader of a qualified continuing professional education program. One hour of continuing professional education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program. Only four hours annually can be earned from instructing by a tax return preparer. Additionally, only six hours annually can be earned from instructing by an enrolled agent or an enrolled retirement agent. A CPA who serves as an instructor, speaker or discussion leader of an approved course will be allowed CPE course credit for actual presentation time, plus actual preparation time of up to 2 hours for each hour of presentation. The maximum continuing professional education credits a CPA can earn annually for instructing a course varies by state. The program must meet all the requirements of a qualified continuing professional educational program as discussed above.

## Measurement

All continuing professional education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour. A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, which is 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as only one contact hour. Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours. For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.



Waiver from the continuing professional education requirements may be allowed for health issues, active military duty, absence from the United States and other case-by-case reasons. A request for waiver must be accompanied by documentation and can be filed no later than last day of the renewal period.



The IRS will provide notice to any person who fails to complete the continuing professional education and fee requirements. Individuals must reply within 60 days of notice to be considered for renewal. If reply is not attempted or the IRS denies renewal the individual may be placed on a roster of inactive enrolled or registered individuals. While on the inactive roster, the individual is not eligible to practice before the IRS.

The individual may, within 30 days after receipt of the notice of denial of renewal, file a written protest of the denial as prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. A protest under Section 10.6 of Circular 230 is not governed by subpart D of Circular 230.

Individuals placed in inactive status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are eligible to practice before the Internal Revenue Service, or use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designations EA or ERPA or other form of reference to eligibility to practice before the Internal Revenue Service. An individual placed in inactive status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of all required continuing professional education hours for the enrollment cycle or registration year.

An individual placed in inactive status must file an application for renewal and satisfy the requirements for renewal as set forth in this section within three years of being placed in inactive status. Otherwise, the name of such individual will be removed from the inactive status roster and the individual's status as an enrolled agent, enrolled retirement plan agent, or registered tax return preparer will terminate. Future eligibility for active status must then be reestablished by the individual.

An individual who no longer practices before the Internal Revenue Service may request to be placed in an inactive retirement status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. An individual who is placed in an inactive retirement status may be reinstated to an active status by filing an application for renewal and providing evidence of the completion of the required continuing professional education hours for the enrollment cycle or registration year. Inactive retirement status is not available to an individual who is ineligible to practice before the Internal Revenue Service or an individual who is the subject of a pending disciplinary matter under this part.

## Recordkeeping

Each individual applying for renewal must retain for a period of four years following the date of renewal the information required with regard to qualifying continuing professional education credit hours. Such information includes: <sup>(1)</sup>

- The name of the CPE Provider organization.
- The location of the program.
- The title of the program, approval number received for the program, and copy of the program content.
- Written outlines, course syllabi, textbook, and/or electronic materials provided or required for the program.
- The date(s) attended.
- The credit hours claimed.
- The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate.
- The certificate of completion and/or signed statement of the hours of attendance obtained from the continuing professional education provider.

## Continuing Professional Education Providers

Continuing professional education providers must be accredited educational institutions recognized by the IRS as a professional organization, society or business. Each continuing professional education provider is required to obtain a provider number and pay applicable user fees. Requirements for qualified continuing professional education programs include:

- Development by qualified individual.
- Current subject matter.
- Qualified instructors, discussion leaders and speakers.
- Evaluation of technical content and presentation.
- Certificate of completion.
- Maintenance of participant attendance and completion for four years.



To qualify for continuing professional education credit the course of learning must:

1. Be a qualifying continuing professional education program designed to enhance professional knowledge in Federal taxation or Federal tax related matters (programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax return preparation software, taxation, or ethics).
2. Be a qualifying continuing professional education program consistent with the Internal Revenue Code and effective tax administration.

Qualifying programs include formal and correspondence or individual self-study programs. A formal program qualifies as a continuing professional education program if it:

1. Requires attendance and provides each attendee with a certificate of attendance.
2. Is conducted by a qualified instructor, discussion leader, or speaker (in other words, a person whose background, training, education, and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program).
3. Provides or requires a written outline, textbook, or suitable electronic educational materials.
4. Satisfies the requirements established for a qualified continuing professional education program pursuant to [Section 10.9 of Circular 230](#).

Qualifying continuing professional education programs include correspondence or individual self-study programs that are conducted by continuing professional education providers and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution.

Such programs qualify as continuing professional education programs only if they:

1. Require registration of the participants by the continuing professional education provider.
2. Provide a means for measuring successful completion by the participants (for example, a written examination), including the issuance of a certificate of completion by the continuing professional education provider.
3. Provide a written outline, textbook, or suitable electronic educational materials.
4. Satisfy the requirements established for a qualified continuing professional education program pursuant to [Section 10.9 of Circular 230](#).

### Representing Oneself and Limited Practice

Upon presentation of satisfactory identification, an individual may appear on their own behalf before the IRS. Additionally, subject to the limitations, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service under the following circumstances:

- An individual may represent a member of his or her immediate family.
- A regular full-time employee of an individual employer may represent the employer.
- A general partner or a regular full-time employee of a partnership may represent the partnership.
- A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.
- A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.
- An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.
- An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

An individual who is under suspension or disbarment from practice before the IRS may not participate in limited practice. Additionally, after notice, a delegate of the IRS may also deny eligibility for an individual to engage in limited practice.





## Preparer Tax Identification Number (PTIN)

Any person that prepares or assists in preparing Federal tax returns for compensation must have a valid preparer tax identification number (PTIN) before preparing returns. The PTIN application process may be completed online. [Form W-12 - IRS Paid Preparer Tax Identification Number Application and Renewal](#), is available for paper applications and renewals, but takes four to six weeks to process. A tax preparer must renew his or her PTIN every year during the renewal season. The renewal season generally runs from mid-October to December 31<sup>st</sup>. The renewal process can be completed online and only takes a few moments. Failure to have and use a valid PTIN may result in penalties. All enrolled agents, regardless of whether they prepare returns, must have a PTIN in order to maintain their status.

On January 18, 2013, the United States District Court for the District of Columbia enjoined the Internal Revenue Service from enforcing the regulatory requirements for registered tax return preparers. In accordance with this order, tax return preparers covered by this program are not required to complete competency testing or secure continuing education. The ruling does not affect the regulatory practice requirements for CPAs, attorneys, enrolled agents, enrolled retirement plan agents or enrolled actuaries or the continuing professional education requirements of individual states. On February 1, 2013, the court modified its order to clarify that the order does not affect the requirement for all paid tax return preparers to obtain a preparer tax identification number (PTIN). IRS regulations still require all paid tax return preparers (including attorneys, CPAs, and enrolled agents) to apply for a Preparer Tax Identification Number (PTIN) before preparing any future Federal tax returns.



In 2017, the United States District court for the District of Columbia upheld the Internal Revenue Service's authority to require the use of a Preparer Tax Identification Number (PTIN), but enjoined the IRS from charging a user fee for the issuance and renewal of PTINs. In 2020, the IRS issued final regulations reinstating fees for obtaining and renewing preparer tax identification numbers (PTIN) for tax return preparers in 2021. The new fee is \$21 plus a \$14.95 fee paid directly to a third party for processing applications and renewals.



### Review Question 3

Which of the following individuals is **not** eligible to practice, on a limited basis, before the IRS?

- A. A limited partner in a partnership may represent the partnership
- B. A regular full-time employee of an individual may represent the employer
- C. A bona fide officer of a corporation may represent the corporation
- D. A regular full-time employee of a trust may represent the trust

See [Review Feedback](#) for answer.

## Subpart B

### Duties and Restrictions Relating to Practice Before the IRS

Subpart B covers relationships between the practitioner and the IRS and the practitioner and the client. There are 19 specific rules about the relationships between the IRS and the client. In basic terms, a practitioner must submit information to the IRS if requested and must advise a client of any known omissions or errors in any filings with the IRS. Additionally, a practitioner must be diligent in their work to prevent mistakes in representations to the IRS. The fees charged by a practitioner must be reasonable. Also, a practitioner cannot withhold client records that prevent the client from complying with IRS filing rules. There cannot be any conflicts of interest between the client and the practitioner and in relation to conflicts of interest rules, a practitioner that prepares tax returns cannot endorse or negotiate checks issued to a client in settlement of a tax liability. <sup>(6)</sup>

### Information Furnished to the IRS



Information requested by the IRS is to be promptly submitted unless the practitioner has good reason to believe the information is subject to attorney/client privilege. Unreasonable delays by a practitioner are not permitted in matters before the IRS. If the requested records are not in the possession or control of the practitioner or client, the IRS must be informed and any information regarding the whereabouts of the records must be provided to the IRS.



The practitioner must make reasonable inquiries of the client regarding location of the records, but the practitioner does not have to make inquiries of any other person or verify any information provided by the client. The practitioner must also provide any information and/or testify concerning any alleged violations when questioned by a duly authorized representative of the IRS, unless the practitioner believes in good faith that the information is privileged.

To the Internal Revenue Service, a practitioner must:

1. On a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.
2. Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.
3. When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

A practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

### Client Omissions

If a practitioner knows that a client has made an error or has omitted information from any return, document, affidavit, or other submitted documents, the practitioner must promptly advise the client of the omission or error and the consequences. Due diligence must be exercised by the practitioner in preparing documents and oral and/or written representations to be submitted to the IRS. When relying on the work of others, it is presumed that the practitioner has exercised due care in the oversight of the work of others.

### Accuracy

In general, tax return preparers should understand the underlying substantive law affecting an item of income or deduction. Tax return preparers must exercise due diligence in preparing or assisting in the preparation, approval, and filing of returns, documents, affidavits or other papers relating to IRS matters. Tax return preparers also must exercise due diligence in determining:

1. The correctness of oral and written representations made by the tax return preparer to the IRS.
2. The correctness of representations made by the tax return preparer to the client with reference to any matter administered by the IRS.

Due diligence, in the context of tax return preparation, is the diligence or care that a reasonable tax preparer would use under the same circumstances. It is an objective standard. Under the general due diligence standards set out in Circular 230, the preparer can on most occasions rely in good faith and without verification on information provided by the client or third parties and contained in previously filed returns. However, in some situations the preparer will be required to make further inquiries to verify the accuracy and completeness of the information provided to meet the due diligence requirements.



The Internal Revenue Code (IRC) provides for enhanced due diligence requirements with respect to claims for the Earned Income Tax Credit. Also, preparers are required to exercise due diligence in determining whether a client has met the requirements for reporting foreign bank and other financial accounts.



A practitioner must apply due diligence to assure accuracy when:

- Preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters.
- Determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury.
- Determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

A practitioner will be presumed (except for certain circumstances) to have exercised due diligence for purposes of Section 10.22 of Circular 230 if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

A practitioner who knows that his or her client has not complied with the revenue laws or has made an error or omission in any return, document, affidavit, or other required paper, has the responsibility to advise the client promptly of the noncompliance, error, or omission. The practitioner also must advise the client of any consequences as provided under the IRC and regulations of such noncompliance, error, or omission. Under Circular 230, the practitioner is not required to notify the IRS.

### Prompt Disposition of Pending Matters

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

### Disbarred/Suspended, Former IRS Employees

Practitioners cannot accept any help or provide assistance to other practitioners that are disbarred or suspended from practice before the IRS. Assistance from former IRS employees is not allowed when Federal law will be violated or when rules regarding practice by former government employees, their partners and their associates will be violated.

### Former Government Employees

Former government employees are limited in their practice to ensure that no conflicts or undue influence arise. Specifically, former government employees:

- Cannot represent or assist, in any particular matter, any person who is or was a specific party to that particular matter in which the practitioner participated while a government employee.
- Cannot represent anyone in any matter before the IRS if the representation would violate the law.
- Who had official responsibility during the last year of government employment for a particular matter involving specific parties may not represent in that particular matter any person who is or was a specific party to that particular matter within two years subsequent to employment.
- Cannot, within one year subsequent to employment, influence any employee of the Treasury Department regarding rules of the Treasury Department for which the former employee had responsibility.

When the former government employee is a member of a firm which represent clients before the IRS, the former government employee must be isolated from matters in which he or she participated in while a government employee.

### Notaries

A tax practitioner cannot perform any official act as a notary in regard to any matter overseen by the IRS. A notary is also excluded from acting as a notary for any matter for which he or she is employed as counsel, attorney or agent.

### Fees

A practitioner's fee must be reasonable in matters before the IRS. Contingent fees are only allowed when the IRS is examining or challenging an original tax return; an amended return, claim for a refund or credit where the amended return or claim was filed within 120 days of taxpayer receipt of an IRS examination notice. Contingent fees are also allowed for services to a client in connection with the determination of interest or penalties assessed by the Service and for services provided with any judicial proceeding arising under the IRC.



## Return of Client's Records

Upon request, a practitioner must promptly return any and all client records required for Federal tax obligation compliance (unless applicable state law provides otherwise). The practitioner may keep copies of the returned records. IRC Section 6107(b) requires a practitioner to retain a copy or list of a return or claim for the period ending 3 years after the close of the return.



The existence of a fee dispute generally does not relieve the practitioner of the responsibility to return client records.

## Conflict of Interest

According to Circular 230, a conflict of interest exists if:

1. The representation of one client will be directly averse to another client.
2. There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

However, if a practitioner believes a competent representation that is not prohibited by law is reasonable, each of the affected clients can waive the conflict of interest and give informed consent, confirmed in writing, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 30 days.



Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

## Solicitation

There are several rules regarding advertising and solicitation of business. In general, an advertisement or solicitation cannot be false, fraudulent, coercive, misleading or deceptive. An example of a business name that is misleading is "Pay Less Tax Service." Additionally, enrolled agents cannot use the term certified or give the impression of an employee relationship with the IRS. Allowed fee arrangements used in solicitations include: fixed fees, hourly rates, a range of fees for services, fees charged for an initial consultation. The method of communicating the fee information must not be deceptive. A copy of direct mail and e-commerce communications must be retained by the practitioner for 36 months from the date of last use.

## Negotiation of Taxpayer Checks

A practitioner who prepares tax returns may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect to a Federal tax liability.

## Practice of Law

Treasury Department Circular 230 should not be construed as an authorization for persons not members of the bar to practice law. Therefore, nothing in the regulations in the circular may be construed as authorizing persons not members of the bar to practice law.

## Best Practices

Tax advisors should provide their clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service.

In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following: <sup>(6)</sup>



1. Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.
2. Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.
3. Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.
4. Acting fairly and with integrity in practice before the Internal Revenue Service.

## Tax Returns and Documents Standards



A tax preparer cannot willfully sign a tax return or advise a client knowing that the return, documentation, or other submitted papers lack a reasonable basis, or is an unreasonable position, or is a willful attempt to understate the tax liability or a reckless disregard of rules by the preparer. A practitioner may not advise a client to take a frivolous tax position on any document, affidavit or other submitted papers or to impede the administration of Federal tax law.

Any penalties that are likely to be applied must be communicated to the client by the practitioner if the practitioner advised the client with respect to the position, prepared or signed the tax return or any other document submitted to the IRS. The practitioner can rely on information provided by the client without verification, but the practitioner may not ignore implications of information furnished that appears to be incorrect or inconsistent with other factual assumptions.

A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of 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.

## Competence

Section 10.35 previously titled *Covered Opinions* has been eliminated and a completely new section has been added. Tax practitioners will no longer need to follow a separate set of standards regarding covered opinions when providing written advice to their clients. Section 10.35 now states a practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.

Also, extensive changes to wording and terminology are reflected in Section 10.36 including the text that an individual who has the principal authority and responsibility for overseeing the firm's practice must now take reasonable steps to ensure that adequate procedures are in place for all members, associates or employees of the firm to comply with Circular 230. The term "individual" has replaced the term practitioner.



Many individuals currently use a Circular 230 disclaimer at the conclusion of every e-mail or other writing to remove the communication from the covered opinion rules in former Section 10.35. In many instances, these disclaimers are inserted without regard to whether the disclaimer is necessary or appropriate. These types of disclaimers are routinely inserted in any written transmission, including writings that do not contain any tax advice. The removal of former Section 10.35 eliminates the detailed provisions concerning covered opinions and disclosures in written opinions. Because amended Section 10.37 does not include the disclosure provisions in the current covered opinion rules, Treasury and the IRS expect that these amendments will eliminate the use of a Circular 230 disclaimer in e-mail and other writings. These rules do not, however, prohibit the use of an appropriate statement describing any reasonable and accurate limitations of the advice rendered to the client.

## Written Advice

Section 10.37, requirements for written advice, has been extensively revised. Keys areas of change include a definition



of a “Federal tax matter” as any matter concerning the application or interpretation of a revenue provision or law impacting a person’s obligation to comply with the Federal tax law in addition to the obligation to file Federal tax returns and comply with any other law or regulation under the IRS umbrella.

A Federal tax matter, as used in Section 10.37, is any matter concerning the application or interpretation of:

1. A revenue provision as defined in Section 6110(i)(1)(B) of the Internal Revenue Code.
2. Any provision of law impacting a person’s obligations under the internal revenue laws and regulations, including but not limited to the person’s liability to pay tax or obligation to file returns.
3. Any other law or regulation administered by the Internal Revenue Service.



Final Section 10.37 replaces the covered opinion rules with principles to which all practitioners must adhere when rendering written advice. Specifically, Section 10.37 states affirmatively the standards to which a practitioner must adhere when providing written advice on a Federal tax matter.

Section 10.37 requires, among other things, that the practitioner:

1. Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events).
2. Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know.
3. Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter.
4. Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable.
5. Relate applicable law and authorities to facts.
6. Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

Also, the revised Section 10.37 does not require that the practitioner describe in the written advice the relevant facts (including assumptions and representations), the application of the law to those facts, and the practitioner’s conclusion with respect to the law and the facts. Rather, the scope of the engagement and the type and specificity of the advice sought by the client, in addition to all other appropriate facts and circumstances, are factors in determining the extent to which the relevant facts, application of the law to those facts, and the practitioner’s conclusion with respect to the law and the facts must be set forth in the written advice.

Also, under the revised Section 10.37, the practitioner may consider these factors in determining the scope of the written advice. Further, the determination of whether a practitioner has failed to comply with the requirements of Section 10.37 will be based on all facts and circumstances, not on whether each requirement is addressed in the written advice.

Additionally, a section on a Standard of Review has been included and states in evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client. In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner’s firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the practitioner’s lack of knowledge of the taxpayer’s particular circumstances, when determining whether a practitioner has failed to comply with this section.

## Reliance Opinions

Written advice is a reliance opinion if the advice concludes at a confidence level of “at least more likely than not” (a greater than 50% likelihood) that one or more significant Federal tax issues would be resolved in the taxpayer’s favor.



## Marketed Opinions

Written advice is a marketed opinion if the practitioner knows or has reason to know that the written advice will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to one or more taxpayer(s).

## Compliance

In Section 10.36, the regulations impose demanding oversight responsibilities on those individuals with principal authority and responsibility for overseeing a firm's practice governed by Circular 230 to manage Circular 230 compliance by all members, associates and employees. The final regulations specifically provide that the tax practice managers not only must ensure that the firm has adequate procedures in place but must ensure that those procedures are properly followed.

Any such individual who has (or such individuals who have or share) principal authority as described above will be subject to discipline for failing to comply with the requirements of this section if: <sup>(6)</sup>

- The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this part, as applicable, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable.
- The individual through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that firm procedures in effect are properly followed, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part, as applicable.
- The individual knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with this part, as applicable, and the individual, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

Although Circular 230 expressly applies only to those who practice before the IRS, the regulations advocate that the IRS is, at a minimum, encouraging firm management to oversee the tax compliance not just of its partners who practice before the IRS but of all of its members, associates and employees. In the absence of a firm designating responsibility for oversight to particular persons, the IRS may identify such person or persons.

## Advisory Committees

To promote and maintain the public's confidence in tax advisors, the Internal Revenue Service is authorized to establish one or more advisory committees composed of at least six individuals authorized to practice before the Internal Revenue Service. Membership of an advisory committee must be balanced among those who practice as attorneys, accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents and registered tax return preparers.



### **Review Question 4**

Section 10.35 of Circular 230 states a tax practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Which of the following is not included as a competence requirement under Section 10.35 of Circular 230?

- A. Appropriate level of knowledge
- B. Thoroughness and preparation necessary for the matter for which the practitioner is engaged
- C. Consulting with experts in the relevant area
- D. Completing mandatory tax law courses at an accredited university or college

See [Review Feedback](#) for answer.



## Subpart C

### Sanctions for Violation of the Regulations

The Secretary of the Treasury, or delegate, has the authority to disbar or censure a practitioner from practice before the IRS for violations of the rules or for misleading clients or potential clients. Additionally, the authority extends to imposing monetary penalties on the practitioner or on the practitioner's employer if the employer was responsible for the infraction. The amount of any monetary penalty is not to be greater than the gross income derived from the conduct giving rise to the penalty. Examples of incompetence and disreputable conduct include: <sup>(6)</sup>

- Conviction of any criminal offense under the Federal tax laws.
- Conviction of any criminal offense involving dishonesty or breach of trust.
- Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.
- Giving false or misleading information to the Department of the Treasury.
- The use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment.
- Willfully failing to make a Federal tax return in violation of the Federal tax laws.
- Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment.
- Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.
- Directly or indirectly attempting to influence, or providing or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by providing any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.
- Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, or possession of the United States.
- Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.
- Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.
- Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws.
- Willfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.
- Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code.
- Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.
- Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.
- Willfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

### Disciplinary Proceedings

"Practitioner" is Circular 230's collective term for individuals who are eligible to practice before the IRS: attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents. Practitioners who fail to comply with any of Circular 230's regulations are subject to the sanctions of private reprimand, public censure, suspension or disbarment from practice before the IRS, and imposition of a monetary penalty. <sup>(12)</sup>





Appraisers are individuals who present evidence or testimony in administrative proceedings before the IRS or the Department of the Treasury. Appraisers who violate applicable Circular 230 rules are subject to disqualification from presenting testimony or evidence. Employers, firms, and other entities which knew or should have known that a practitioner acting on their behalf engaged in misconduct subject to discipline under Circular 230 are subject to a monetary penalty.

### Receipt of Information Concerning Practitioner

If an officer or employee of the Internal Revenue Service has reason to believe a practitioner has violated any provision of Circular 230, the officer or employee will promptly make a written report of the suspected violation to the Director of the Office of Professional Responsibility (OPR). The report will explain the facts and reasons upon which the officer's or employee's belief rests and must be submitted to the office(s) of the Internal Revenue Service responsible for administering or enforcing the action.

Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision of this part may make an oral or written report of the alleged violation to the office(s) of the Internal Revenue Service responsible for administering or enforcing the action or any officer or employee of the Internal Revenue Service.

If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation and submit the report to the office(s) of the Internal Revenue Service responsible for administering or enforcing Circular 230.

No report described above shall be maintained unless retention of the report is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. Reports must be destroyed as soon as permissible under the applicable records control schedule. The destruction of any report will not bar any proceeding under subpart D of this part but will preclude the use of a copy of the report in a proceeding under subpart D of Circular 230.



Please see the Internal Revenue Code, corresponding Treasury Regulations, and other related published guidance for additional information on each penalty section.

### Institution of Proceeding

Whenever it is determined that a practitioner (or employer, firm or other entity, if applicable) violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in Subpart C, the practitioner may be reprimanded or, in accordance with [Section 10.62 - Contents of Complaint](#), subject to a proceeding for sanctions.

Whenever a penalty has been assessed against an appraiser under the Internal Revenue Code and an appropriate officer or employee in an office established to enforce this part determines that the appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct, the appraiser may be reprimanded or, in accordance with [Section 10.62 - Contents of Complaint](#), subject to a proceeding for disqualification. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in [Section 10.62 - Contents of Complaint](#).

The proceeding for a violation of Circular 230 regulations is instituted when the IRS representative signs a complaint naming the attorney, CPA, registered tax return preparer, enrolled agent, or enrolled actuary, and files the complaint with the Administrative Law Judge (ALJ). Except as provided elsewhere, a proceeding will not be instituted under Circular 230 unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments. <sup>(6)</sup>



### Review Question 5

How is a proceeding for violation of the regulations in Circular 230 instituted against a tax practitioner?

- A. An aggrieved taxpayer files a petition with the United States Tax Court stating a claim against the tax practitioner
- B. The IRS representative signs a complaint naming the tax practitioner and files the complaint with the Administrative Law Judge (ALJ)
- C. The Secretary of the Treasury files a complaint against the tax practitioner in the United States District Court for the District of Columbia
- D. The Commissioner of the IRS files a complaint against the tax practitioner with the United States Tax Court

See [Review Feedback](#) for answer.

## Subpart D

### Rules Applicable to Disciplinary Proceedings

Subpart D of Circular 230 covers details of disciplinary hearings and their procedures. Once a complaint is made against a practitioner, a hearing is held to determine the merits of the complaint. This subpart of the circular outlines the contents of a complaint, how the complaint is processed and filed, and how the practitioner is to respond to the complaint. Ultimately, the complaint can be argued in front of an Administrative Law Judge with jurisdiction over these matters. <sup>(6)</sup>

The Office of Professional Responsibility (OPR) has exclusive authority for all matters related to practitioner discipline, including disciplinary proceedings and sanctions. (See [Circular 230, Section 10.1 – Offices](#)). OPR is committed to processing referrals and conducting investigations in a timely and fair manner. The investigative process and disciplinary proceedings follow established due process guidelines designed to ensure that practitioners receive notice of the allegations against them and an opportunity to present their side of the story at multiple stages. <sup>(13)</sup>

OPR receives referrals about practitioners from a variety of sources. The majority of referrals come directly from IRS field personnel, such as Revenue Agents, Revenue Officers, Special Agents and Appeals/Settlement Officers. OPR also receives referrals from other government agencies, such as the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice and state licensing authorities. An OPR manager reviews all referrals when they arrive in OPR. If it appears that a violation of Circular 230 has occurred, the manager will assign the case to an attorney or paralegal for communication with the referred individual and for further investigation.

If it is determined a practitioner violated any laws governing practice before the IRS, the practitioner may be reprimanded or sanctioned. Whenever a penalty assessed against a practitioner demonstrates willful, reckless or gross incompetence, the practitioner may be subject to disqualification. A conference with the practitioner may occur concerning allegations of misconduct. Rather than proceeding, a practitioner may provide consent for sanction under Subpart C of the Circular 230. It is up to the discretion of the OPR delegate to accept or decline the voluntary sanction.

### Complaint

A complaint must be served by certified mail, first class mail, a private delivery service, in person or other means agreed to by the respondent. The complaint must provide the following contents to the practitioner: <sup>(13)</sup>

- Clear and concise description of the facts and law that constitute the proceeding.
- Specific sanction sought.
- Time for answering the complaint.



The time for answering a complaint cannot be less than 30 days from the date of service of the complaint and must include the address of the Administrative Law Judge and the name and address of the IRS representative. <sup>(6)</sup>



## Answer

The practitioner's answer must be filed with the Administrative Law Judge and served on the Internal Revenue Service within the time specified in the complaint. The answer must provide the following contents:

- Grounds of Defense (general denials are not permitted).
- Admission or denial of each allegation.
- Acknowledging statement and signature.

Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure.

OPR encourages the practitioner to submit any evidence that will aid in resolving the issue as early as possible in the investigative stage. If the matter proceeds to an administrative hearing, the judge does not have to admit evidence that is brought before the court at the last minute.<sup>(13)</sup>

## Hearing

An evidentiary hearing must be held in all proceeding prior to the issuance of a decision. All hearings will be recorded and transcribed. The testimony of witnesses will be taken under oath or affirmation. Proceedings are conducted by an Administrative Law Judge (ALJ). The Administrative Law Judge (ALJ) has the authority to do the following:<sup>(6)</sup>

- Administer oaths and affirmations.
- Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge (ALJ).
- Determine the time and place of the hearing and regulate its course and conduct.
- Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings.
- Rule on offers of proof, receive relevant evidence, and examine witnesses.
- Take or authorize the taking of depositions or answers to requests for admission.
- Receive and consider oral or written argument on facts or law.
- Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties.
- Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding.
- Make decisions.

## Decision

Within 180 days after the conclusion of a hearing the Administrative Law Judge should enter a decision in the case. A copy of the decision will be provided to the Internal Revenue Service's representative and to the respondent. In the absence of an appeal or further proceedings, after 30 days it becomes the decision of the agency. When the final decision in a case is against the respondent the following effects may apply:<sup>(6)</sup>

- *Disbarment* - the practitioner will not be allowed to practice before the IRS unless and until authorized to do so.
- *Suspension* - the practitioner will not be allowed to practice before the IRS during the suspension period.
- *Censure* - the practitioner will be permitted to practice before the IRS but may be subject to conditions.

In general, a disbarred practitioner may petition for reinstatement five years following disbarment, suspension or disqualification (or immediately following the expiration of the suspension or disqualification period, if shorter than 5 years). Reinstatement will not be granted unless the Internal Revenue Service is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.



## Suspension or Disbarment

Under [Section 10.79 of Circular 230](#), when a final agency decision results in suspension or disbarment of a practitioner/respondent or when the practitioner/respondent has provided his or her consent to suspension or disbarment and such consent has been accepted by the Director of OPR, the practitioner/respondent will not be permitted to practice before the IRS for the period of time imposed by the final agency decision or as agreed to by consent.

A suspended or disbarred individual may not: <sup>(14)</sup>

1. **Prepare or file documents (including tax returns) or other correspondence with the IRS.** The restriction applies regardless of whether the individual signs the document or correspondence and regardless of whether the individual personally files, or directs another person to file, documents or correspondence with the IRS. Also, as a result of a suspension or disbarment, the individual will have any preparer tax identification number (PTIN) revoked.
2. **Render written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion.** The prohibition applies regardless of whether the written advice is a part of a larger document or a component of a set of documents and regardless of whether the individual signs the written advice.
3. **Represent a client at conferences, hearings, and meetings.** The prohibition applies to all forms of conferences, hearings, and meetings, including those conducted person-to-person or by telephone or by teleconferencing facilities. The prohibition bars the individual from representing the taxpayer, that is, from advocating, disputing, arguing, or otherwise negotiating on the taxpayer's behalf with respect to the taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, including provisions outside Title 26 which have been delegated to the Commissioner by the Treasury Secretary or Congress (e.g., foreign bank account reporting; health care insurance premium provisions). The prohibition applies regardless of whether the taxpayer is a paying client and also applies to all of the limited forms of practice defined in [Section 10.7\(c\)](#). The prohibition does not affect a taxpayer's right to the services of the individual as a witness or any right of the taxpayer to be accompanied by the individual to conferences, hearings, or meetings. However, OPR will consider any instances of the individual's advocating or negotiating on the taxpayer's behalf at conferences, hearings, or meetings, to be attempted practice in violation of the individual's suspended or disbarred status.
4. **Execute waivers, consents, or closing agreements; receive a taxpayer's refund check; or sign a tax return on behalf of a taxpayer.** Because these acts require the filing of a power of attorney authorizing the representative to perform these acts, they are considered to be practice before the IRS. See [Section 601.504\(a\)](#) of the IRS Conference and Practice Requirements, which are in 26 C.F.R. Sections 601.501 through 601.509 and are also in pamphlet form as [Publication 216 - Conference and Practice Requirements](#).
5. **File powers of attorney with the IRS.** OPR will consider the filing of a power of attorney appointing an individual as a representative who is under suspension or disbarment to be an attempt to practice in violation of the individual's suspended or disbarred status. An individual who seeks to practice before the IRS must declare (usually on [Form 2848 - Power of Attorney and Declaration of Representative](#)) that he or she is not under suspension or disbarment from practice before the IRS. OPR will refer false declarations to the Treasury Inspector General for Tax Administration.
6. **Accept assistance from another person (or request assistance) or assist another person (or offer assistance) if the assistance relates to a matter constituting practice before the IRS or enlist another person for the purpose of aiding and abetting practice before the IRS.** [Sections 10.24\(a\)](#) and [10.51\(a\)\(11\)](#) prohibit individuals who are eligible to practice before the IRS from accepting assistance from, or assisting, or aiding or abetting a suspended or disbarred individual in matters constituting practice. OPR will consider both a suspended or disbarred individual and any other individual's/firm's participation in such relationships to be in violation of [Sections 10.24\(a\)](#) and [10.51\(a\)\(11\)](#) and evidence of disreputable conduct under [Section 10.51\(a\)](#).
7. **State or imply that he or she is eligible to practice before the IRS.** OPR will consider such express or implied statements to be false, misleading, or deceptive, and to constitute a violation of [Section 10.30](#). In addition, under [Section 10.6\(j\)\(4\)](#), individuals may not use the terms enrolled agent, enrolled retirement plan agent, or registered tax return preparer, the designation EA or ERPA, or other form of reference to eligibility to practice before the IRS while disbarred, suspended, or in inactive status. These prohibitions apply to business cards, business stationary, and websites.



A suspended or disbarred individual may:<sup>(14)</sup>

1. Represent him or herself with respect to any matter. Authorized under Section 10.7(a).
2. Appear before the IRS as a trustee, receiver, guardian, administrator, executor, or other fiduciary if duly qualified/authorized under the law of the relevant jurisdiction. Authorized under Section 10.7(e). Fiduciaries should file Form 56 - Notice Concerning Fiduciary Relationship.
3. Appear as a witness for the taxpayer. Authorized under Section 10.8(b) and Revenue Procedure 68-29, reprinted in pamphlet form as Publication 499. A witness is limited to providing factual information, and he or she may not advocate particular positions on issues or controversies arising during a tax examination.
4. Furnish information at the request of the IRS or any of its officers or employees. Authorized under Section 10.8(b).
5. Receive information concerning a taxpayer from the IRS pursuant to a valid tax information authorization. A suspended or disbarred individual's appointment on Form 8821 - Tax Information Authorization, entitles him or her to receive taxpayer information but does not entitle him or her to practice before the IRS on behalf of that taxpayer.

### Notice of Disbarment, Suspension, Censure, or Disqualification

On the issuance of a final order censuring, suspending, or disbaring a practitioner or a final order disqualifying an appraiser, notification of the censure, suspension, disbarment or disqualification will be given to appropriate officers and employees of the Internal Revenue Service and interested departments and agencies of the Federal government. The Internal Revenue Service may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

### Appeal from Administrative Decision

Both OPR and the practitioner have the right to appeal the Initial Decision and Order of the ALJ to the Department of the Treasury within 30 days of being served. A specially designated senior attorney (called the Appellate Authority) within The Department of Treasury's Office of Chief Counsel reviews the appeals and accompanying briefs and renders the Final Agency Decision in the case (See Circular 230, Section 10.77).

### Filing Suit in U.S. Federal District Court

If the practitioner disagrees with the Appellate Authority's Final Agency Decision, he or she may file a complaint against the OPR in U.S. Federal District Court in the district where he or she resides. The Administrative Procedure Act contains provisions governing that proceeding (See 5 USC Sections 551-559, 702). The proceeding will not be a new trial. Rather, the district court will review the entire administrative record already in existence in the case to determine if the agency's action against the practitioner was arbitrary, capricious, contrary to law or otherwise an abuse of discretion.<sup>(13)</sup>

### Final Agency Decisions in Disciplinary Cases

Final regulations issued under Circular 230 on September 26, 2007 allowed the Office of Professional Responsibility (OPR) to publish decisions on its cases, once they become final agency decision.

A decision becomes the final agency decision at one of two points:<sup>(15)</sup>

1. After an Administrative Law Judge issues a decision and either party has not appealed the decision to the Secretary of the Treasury or his designee within 30 days.
2. After the Secretary of the Treasury or his designee has issued his or her decision. Although the practitioner may further appeal the decision of the Secretary of the Treasury to the Federal District Court, the decision may be made public, and the term of any suspension or disbarment will begin at that point.

### Petition For Reinstatement

In general, a practitioner disbarred or suspended under Section 10.60, or suspended under Section 10.82, or a disqualified appraiser may petition for reinstatement before the Internal Revenue Service after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period, if shorter than 5 years). Reinstatement will not be granted unless the Internal Revenue



Service is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

### Expedited Suspension



Circular 230 Section 10.82 authorizes the immediate suspension of a practitioner engaged in certain prohibited conduct, but the revised final regulations extend the expedited disciplinary proceedings against practitioners who have “willfully failed to comply with their Federal tax filing obligations”.

The regulations state that a pattern of willful disreputable conduct would be defined as failing to file an annual Federal tax return in four of the five tax years immediately before an expedited suspension proceeding or failing to file a return required more frequently than annually in five of seven tax periods immediately before a suspension proceeding. Also, Section 10.82 has been expanded as to the categories where an expedited proceeding would apply.

## Subpart E

### General Provisions

Subpart E contains general provisions relating to the availability of official records. The IRS maintains records for public inspection with various rosters which include:

- Individuals (and employers, firms, or other entities, if applicable) censured, suspended, or disbarred from practice before the Internal Revenue Service or upon whom a monetary penalty was imposed.
- Enrolled agents and inactive enrolled agents.
- Enrolled retirement plan agents and those in inactive status.
- Tax return preparers and those in inactive status.
- Disqualified appraisers.
- Qualified continuing professional education providers, including providers:
  - Who have obtained a qualifying continuing professional education provider number.
  - Whose qualifying continuing professional education number has been revoked for failure to comply with the requirements of this part of Circular 230.

The Internal Revenue Service will also maintain and make available for public inspection in the time and manner prescribed by the Secretary, or delegate, other records of the Director of the Office of Professional Responsibility that may be disclosed upon specific request, in accordance with the applicable law.

### Saving Provision



Any proceeding instituted under Circular 230 prior to June 12, 2014, for which a final decision has not been reached or for which judicial review is still available is not affected by the Circular 230 revisions. Any proceeding based on conduct engaged in prior to June 12, 2014, which is instituted after that date, will apply subpart D and E as revised, but the conduct engaged in prior to the effective date of these revisions will be judged by the regulations in effect at the time the conduct occurred.

## Individual Income Tax Penalties

### Accuracy Related Penalties

The 20% accuracy related penalty is imposed on the underpayment of tax due to:

1. Negligence or disregard of rules or regulations.
2. Substantial understatement of tax.
3. Substantial valuation misstatement (increased to 40% for gross valuation misstatement).
4. Transaction lacking economic substance (increased to 40% for undisclosed transaction lacking economic substance).
5. Undisclosed foreign financial asset understatement (40% in all cases).



The two most common accuracy related penalties are the substantial understatement penalty and the negligence or disregard of the rules or regulations penalty. These penalties are calculated as a flat 20% of the net understatement of the tax.<sup>(16)</sup>

### Substantial Understatement

The understatement is substantial if it is more than 10% of the correct tax or \$5,000. To properly disclose the position, complete and attach IRS Form 8275 - Disclosure Statement to the tax return and disclose all relevant facts. As of December 31, 2015, if the taxpayer fails to report a substantial amount of income, then the IRS has 6 years (instead of 3 years) to create an audit assessment. In this case, the taxpayer must have failed to report 25% or more of his or her total income.<sup>(16)</sup>

The taxpayer may avoid the substantial understatement penalty if he or she has substantial authority for his or her tax treatment of the item or through adequate disclosure. To avoid the substantial understatement penalty by adequate disclosure, the taxpayer must properly disclose the position on the tax return and there must at least be a reasonable basis for the position.

To properly disclose the position, the taxpayer completes and attaches IRS Form 8275 - Disclosure Statement to his or her tax return and discloses all relevant facts. A reasonable basis is a relatively high standard of tax reporting, that is, significantly higher than not frivolous or not patently improper. The position must be more than just merely arguable or merely a colorable claim. The position must be reasonably based on authority supporting the position.

### Negligence or Disregard of the Rules

Negligence includes (but is not limited to) any failure to:<sup>(16)</sup>

- Make a reasonable attempt to comply with the internal revenue laws.
- Exercise ordinary and reasonable care in preparation of a tax return.
- Keep adequate books and records or to substantiate items properly.

This penalty may be asserted if the taxpayer carelessly, recklessly or intentionally disregards IRS rules and regulations - by taking a position on his or her return with little or no effort to determine whether the position is correct or knowingly taking a position that is incorrect. The taxpayer will not have to pay a negligence penalty if there was a reasonable cause for a position he or she took and he or she acted in good faith.

Negligence includes any failure to make reasonable attempts to comply with the tax code. The understatement of tax is considered substantial if the taxpayer understates his or her income by more than 10% or \$5,000.00.

### Failure to File Penalties

The failure to file penalty is assessed for each month or partial month from the date the tax return is due. The penalty is 5% per month, up to a maximum of 25%. In almost all cases, the taxpayer will also be assessed, in addition to the failure to file penalty, a failure to pay penalty. For tax returns filed in 2021, the amount of the additional tax payable for failure to file a tax return within 60 days of the due date shall not be less than the lesser of \$435 or 100% of the amount required to be shown as tax on the return.

### Failure to Pay Penalty

The failure to pay penalty is .05% for each month or partial month until the tax is paid. Note that an extension to file does not extend the time to pay tax. For example, if the tax return is due on April 15 and the taxpayer files an automatic six-month extension until October 15, he or she still must pay at least 90% of the tax shown on the return when filed or he or she will incur a failure to pay penalty.

### Civil Fraud Penalty

Investors of abusive tax schemes that try to escape their legal tax responsibilities are still liable for taxes, interest, and civil penalties. Violations of the Internal Revenue Code with the intent to evade income taxes may result in a civil fraud penalty or criminal prosecution. Civil fraud can include a penalty of up to 75% of the underpayment of tax attributable



to fraud, in addition to the taxes owed. Criminal convictions of promoters and investors may result in fines up to \$250,000 and up to five years in prison.

### Frivolous Tax Return Penalty

A tax practitioner may not advise a taxpayer to take a position on a document that will be submitted to the IRS unless the position is not frivolous. If a taxpayer files a frivolous return, the penalty may be \$5,000. Jointly file the return, and the taxpayer and his or her spouse may be liable for \$5,000 each. This penalty is added to other penalties.

### Fixing America's Surface Transportation (FAST) Act

The Fixing America's Surface Transportation (FAST) Act was signed into law in December 2015. The purpose of the FAST Act was to provide long-term funding for transportation projects, including new highways. Also included in the bill was a new tax law that requires the Department of State to deny a passport (or renewal of a passport) to a seriously delinquent taxpayer or revoke any passport previously issued to a seriously delinquent taxpayer.

For purposes of the law, a "seriously delinquent tax debt" is defined as "an unpaid, legally enforceable Federal tax liability" when a debt greater than \$54,000 for 2021, including interest and penalties, has been assessed and a notice of lien or a notice of levy has been filed. The limit is adjusted each year for inflation and cost of living. The limit is not per year but cumulative meaning that it is the total tax debt that matters.

## **Tax Return Preparer Penalties**

The IRS has penalty and injunctive authority to address improper tax return preparation, and abusive transaction promoters. The Internal Revenue Code (IRC) contains penalties to stop fraudulent, unscrupulous and/or incompetent tax return preparers, abusive transaction promoters, and material advisors whose failure to furnish information or maintain lists with respect to reportable transactions. Penalty assertion is one enforcement vehicle for noncompliant return preparers, promoters, and material advisors.

### Sanctionable Acts

The Secretary of the Treasury may censure, suspend or disbar from practice before the IRS any attorney, CPA or enrolled agent who:

- Is shown to be incompetent or disreputable.
- Fails to comply with any regulations relating to practice before the IRS.
- Willfully and knowingly, with intent to defraud, misleads or threatens any claimant or potential claimant.

### Reporting Requirements for Tax Return Preparers

Section 6060, Reporting Requirements for Tax Return Preparers, applies to any person who employs one or more income tax return preparers to prepare any return of tax under the IRC. The general rule states any person who employs a tax return preparer to prepare any return or claim for refund other than for such person at any time during a return period shall make a return setting forth the name, taxpayer identification number, and place of work of each tax return preparer employed by him at any time during such period. For purposes of this section, any individual who in acting as a tax return preparer is not the employee of another tax return preparer shall be treated as his own employer.

The return required by this section shall be filed, in such manner as the Secretary may by regulations prescribe, on or before the first July 31 following the end of such return period. In lieu of the return required by subsection (a), the Secretary may approve an alternative reporting method if he determines that the necessary information is available to him from other sources. The term return period means the 12-month period beginning on July 1 of each year, except that the first return period shall be the 6-month period beginning on January 1, 1977 and ending on June 30, 1977. <sup>(17)</sup>





## Paid Preparer's Due Diligence Checklist

The due diligence requirement was originally designed to reduce errors on returns claiming the Earned Income Tax Credit (EITC). Legislation in 2015 expanded the due diligence requirements to include the Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), and American Opportunity Tax Credit (AOTC). Under the Tax Cuts and Jobs Act (TCJA), the due diligence requirement now also applies to individual income tax returns claiming the head of household (HOH) filing status and Credit for Other Dependents (ODC).

Paid preparers must submit [Form 8867 - Paid Preparer's Due Diligence Checklist](#) with every tax return claiming any of the covered tax benefits. The form is designed as a checklist to help paid preparers meet the requirement by obtaining eligibility information from their clients. Paid preparers are required to keep copies of the form or comparable documentation for their records, which is also subject to review by the IRS. Completing the form is not a substitute for actually performing the necessary due diligence and completing all required forms and schedules when preparing the return.



Also, the paid tax return preparer due diligence penalty under IRC Section 6695(h) is now indexed for inflation. Therefore, the penalty for failure to meet the due diligence requirements with respect to returns and claims for refund filed in 2021 is \$545 per credit per return.

A paid tax return preparer is required to exercise due diligence when preparing any client's return or claim for refund. As part of exercising due diligence, the tax preparer must interview the client, ask adequate questions, and obtain appropriate and sufficient information to determine correct reporting of income, claiming of tax benefits (such as deductions and credits), and compliance with the tax laws.

A paid tax return preparer must meet specific due diligence requirements set forth in Treasury Regulations when he or she prepares returns and claims for refund involving the HOH filing status, EITC, the AOTC and/or the CTC/ACTC/ODC. To meet these due diligence requirements, the tax preparer may need to ask additional questions and obtain additional information to determine eligibility for and the amount of the HOH status, EITC, AOTC, and CTC/ACTC/ODC. A tax preparer has complied with the due diligence requirements set forth in Treasury Regulations with respect to the HOH filing status, EITC, AOTC, and/or CTC/ACTC/ODC claimed on a return or claim for refund if he or she:

1. Completes Form 8867 truthfully and accurately and completes the actions described on Form 8867 for each credit claimed for which he or she is the paid tax return preparer.
2. Submits Form 8867 in the manner required.
3. Meets the knowledge requirement by interviewing the taxpayer, asking adequate questions, documenting the taxpayer's responses on the return or in his or her notes, reviewing adequate information to determine if the taxpayer is eligible to claim the credit(s) and in what amount(s), **and**
4. The tax preparer keeps all five of the following records for three years from last of the due date of the tax return (without extensions), the date the return was filed, the date the return was presented to the taxpayer for signature or the date the tax preparer submitted to the signing tax return preparer:
  - a. A copy of Form 8867.
  - b. The applicable worksheet(s) or his or her own worksheet(s) for any credits claimed.
  - c. Copies of any taxpayer documents you may have relied upon to determine eligibility for and the amount of the credit(s).
  - d. A record of how, when, and from whom the information used to prepare Form 8867 and worksheet(s) was obtained.
  - e. A record of any additional questions he or she may have asked to determine eligibility for and amount of the credits, and the taxpayer's answers.

### Completing Form 8867

Form 8867 covers the HOH filing status, EITC, the AOTC, and the CTC/ACTC/ODC. A tax preparer should only complete columns corresponding to credits actually claimed on the taxpayer's return that he or she prepared. Only paid tax return preparers should complete Form 8867. Form 8867 is divided into questions that relate to all four topics and has questions that are specifically related to HOH filing status only, EITC only, CTC/ACTC/ODC only, and the AOTC only.



## Due Diligence Requirements

The tax preparer completes the appropriate column for each credit for which he or she was the paid tax return preparer determining the taxpayer's eligibility for and amount of the credit. Columns for credits for which he or she was not the paid tax return preparer should be left blank.

## Due Diligence Questions for Returns Claiming EITC

A paid tax return preparer must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the EITC. Although lines 9a, 9b and 9c only ask three specific questions about EITC eligibility related to claiming a qualifying child, the tax preparer's client must meet all of the eligibility requirements for claiming the EITC. Therefore, the tax preparer's client cannot claim the EITC if all of the eligibility requirements for the EITC are not satisfied, even if the tax preparer answers "yes" to lines 9a, 9b and 9c.

## Due Diligence Questions for Returns Claiming CTC, ACTC and/or ODC

A paid tax return preparer must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the CTC, ACTC and/or ODC. Lines 10, 11, and 12 only ask three specific questions about CTC, ACTC and ODC eligibility. However, the tax preparer's client must meet all of the eligibility requirements for claiming the CTC, ACTC and/or ODC. Therefore, the tax preparer's client cannot claim the CTC, ACTC and/or ODC if all of the eligibility requirements for these credits are not satisfied, regardless of the answers to questions on line 10.

## Due Diligence Questions for Returns Claiming AOTC

A paid tax return preparer must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the AOTC. Although line 13 only asks about substantiation of qualified tuition and related expenses, the tax preparer's client must meet all of the eligibility requirements for claiming the AOTC. Therefore, the tax preparer's client cannot claim the AOTC if all of the eligibility requirements for the AOTC are not satisfied, even if the tax preparer answers "yes" on line 13.

## Due Diligence Questions for Returns Claiming HOH Filing Status

A paid tax return preparer must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the HOH filing status. Although line 14 only asks about whether the taxpayer was unmarried or considered unmarried on the last day of the tax year and provided more than half of the cost of keeping up a home for the year for a qualifying person, the tax preparer's client must meet all of the eligibility requirements for claiming the HOH filing status. Therefore, the tax preparer's client cannot claim the HOH filing status if all of the eligibility requirements for the HOH filing status are not satisfied, even if the tax preparer answers "yes" on line 14.

## Credit Eligibility Certification

The tax preparer must certify that all of the answers on Form 8867 are, to the best of his or her knowledge, true, correct and complete. Failure to meet due diligence requirements with respect to claiming the HOH filing status, EITC, the AOTC, and the CTC/ACTC/ODC could result in a \$545 penalty for each failure. For example, if a paid tax return preparer prepares a return claiming the HOH filing status, EITC, the AOTC and the CTC/ACTC/ODC and he or she failed to meet the due diligence requirements for all of these credits, the tax preparer could be subject to a penalty of \$1,635.

## Document Retention

To meet the due diligence requirements for the HOH filing status, EITC, the AOTC, and the CTC/ACTC/ODC, you must keep all of the following records: <sup>(18)</sup>

1. A copy of Form 8867.
2. The applicable worksheet(s) or your own worksheet(s) for any credits claimed specified in Due Diligence Requirements.
3. Copies of any taxpayer documents you may have relied upon to determine eligibility for and the amount of the credit(s).



4. A record of how, when, and from whom the information used to prepare Form 8867 and worksheet(s) was obtained.
5. A record of any additional questions you may have asked to determine eligibility for and amount of the credits, and the taxpayer's answers.

You must keep those records for three years from the latest of the following dates: <sup>(18)</sup>

- The due date of the tax return (not including extensions).
- The date the return was filed (if you are a signing tax return preparer electronically filing the return).
- The date the return was presented to the taxpayer for signature (if you are a signing tax return preparer not electronically filing the return).
- The date you submitted to the signing tax return preparer the part of the return for which you were responsible (if you are a nonsigning tax return preparer).

These records may be kept on paper or electronically in the manner described in Revenue Procedure 97-22 (or later update). <sup>(18)</sup>

### Consequences of Filing EITC Returns Incorrectly

People who come to you, a tax return preparer, expect you to know the tax law and prepare an accurate return. Also, if you are paid and prepare EITC claims, you must meet EITC due diligence requirements.

If the IRS examines your client's return and denies all or a part of EITC, your client: <sup>(19)</sup>

- Must pay back the amount in error with interest.
- May need to file the [Form 8862 - Information to Claim Earned Income Tax Credit after Disallowance](#).
- May be banned from claiming EITC for the next two years if the IRS finds the error is because of reckless or intentional disregard of the rules.
- May be banned from claiming EITC for the next ten years if the IRS finds the error is because of fraud.

If the IRS examines the EITC claims you prepared and finds you did not meet all four due diligence requirements, you can get: <sup>(19)</sup>

- A \$545 penalty for each failure to comply with EITC due diligence requirements. The penalty amounts are covered in IRC Section 6695(g). (The IRS adjusted the penalty for taxable year returns beginning in 2015 for cost of living.)
- A minimum penalty of \$1,000 if you prepare a client return and IRS finds any part of the amount of taxes owed is due to an unreasonable position (For reference see IRC [Section 6694\(a\)](#)).
- A minimum penalty of \$5,000 if you prepare a client return and IRS finds any part of the amount of taxes owed is due to your reckless or intentional disregard of rules or regulations (For reference see IRC [Section 6694\(b\)](#)).

The IRS can also penalize an employer or employing firm if an employee fails to comply with the EITC due diligence requirements. However, there are only specific circumstances when an employer is subject to the due diligence penalty: <sup>(20)</sup>

- Management participated in or, prior to the time the return was filed, knew of the failure to comply with the due diligence requirements.
- The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements.
- The firm establishes appropriate compliance procedures but disregards those procedures through willfulness, recklessness, or gross indifference, including ignoring facts that would lead a person of reasonable prudence and competence to investigate or figure out the employee was not complying.



### Review Question 6

When a tax practitioner prepares a tax return in which the taxpayer claims the Earned Income Tax Credit (EITC), all of the following are true except:

- A. Due diligence requirements apply
- B. No special requirements apply to returns claiming Earned Income Tax Credit (EITC)
- C. The preparer may be penalized \$545 if no attempt is made to determine eligibility for the Earned Income Tax Credit (EITC)
- D. The preparer must take additional steps to ensure that a client is eligible for Earned Income Tax Credit (EITC)

See [Review Feedback](#) for answer.

## Additional Tax Return Preparer Penalties

### Understatement of Taxpayer's Liability

Several potential penalties may be assessed against tax return preparers. Below is a summary of the Preparer Penalties under Title 26 of Internal Revenue Code, [Sections 6694 and 6695](#).<sup>(21)</sup>

- *Due to unreasonable position* – a first-tier penalty for an understatement due to unreasonable position is the greater of \$1,000 or 50% of income derived with respect to the refund claim.
- *Due to willful or reckless conduct* – a second-tier penalty for an understatement due to willful or reckless conduct is the greater of \$5,000 or 75% of income derived with respect to the refund claim.



The Protecting Americans from Tax Hikes Act of 2015 expanded the penalty for tax preparers who engage in willful or reckless conduct, which was the greater of \$5,000 or 50% of the preparer's income with respect to the return, by increasing the 50% amount to 75% (IRC 6694(b)).

### Failure to Follow Procedures

Penalties assessable for failure to meet the requirements described previously, unless such failure is due to reasonable cause and not to willful neglect, are:

- *Failure to furnish copy to taxpayer* - \$50 for each failure to furnish a copy of a return or claim with a maximum penalty of \$27,000 in a calendar year.
- *Failure to sign return* - \$50 for each failure to sign a return for refund with a maximum penalty of \$27,000 in a calendar year.
- *Failure to furnish identifying number (PTIN)* - \$50 for each failure to furnish an identifying number on a return with a maximum penalty of \$27,000 in a calendar year.
- *Failure to retain copy or list* - \$50 for each failure to comply with IRC [Section 6107\(b\)](#) to retain a copy or list of a return or claim for the period ending 3 years after the close of the return. There is a maximum penalty of \$27,000 in a return period.
- *Failure to file correct information* - \$50 for each failure with a maximum penalty of \$27,000 in a return period.

### Negotiation of Taxpayer Checks

A \$545 penalty may be imposed for a tax preparer who endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect to a Federal tax liability.

### Promoting Abusive Tax Shelters

The penalty for promoting abusive tax shelters is generally equal to \$1,000 or, if lesser, 100% of income derived from each organization or sale of the abusive plan. IRS, the Office of Chief Counsel and Treasury issue formal guidance on certain tax avoidance transactions that are referred to as listed transactions. Taxpayers are required to disclose their participation in listed transactions.



### Aiding or Abetting in Tax Liability Understatement

Tax return preparers also may be penalized \$1,000 for aiding or abetting in an understatement of tax liability on a return. The penalty is \$10,000 if conduct relates to a corporation's tax return.

### Disclosure or Use of Information

Internal Revenue Code [Section 7216](#) is a criminal provision enacted by the U.S. Congress in 1971 that prohibits preparers of tax returns from knowingly or recklessly disclosing or using tax return information. Tax return information consists of all the information tax return preparers obtain from taxpayers or other sources in any form or manner that is used to prepare tax returns or is obtained in connection with the preparation of returns.

Tax return information also includes all computations, worksheets, and printouts preparers create; correspondence from IRS during the preparation, filing and correction of returns; statistical compilations of tax return information; and tax return preparation software registration information.

- *Unauthorized disclosure* - The penalty is \$250 for each unauthorized disclosure or use of information furnished in connection with a taxpayer return with a maximum penalty of \$10,000 per calendar year.
- *Knowing or reckless disclosure* – Upon conviction of a misdemeanor a fine of up to \$1,000 or imprisonment for up to one year or both along with the costs of prosecution.

### Willful Preparation of a False or Fraudulent Return

- *Guilty of a felony* – Upon conviction, the practitioner may face a fine of up to \$100,000 or imprisonment for up to 3 years or both. The practitioner may also be responsible for costs of prosecution. A fine amount up to \$500,000 may be imposed if fraud involves a corporation.
- *Guilty of a misdemeanor* – Upon conviction, the practitioner may face a fine up to \$10,000 or imprisonment of up to 1 year or both. A fine amount up to \$50,000 may be imposed if fraud involves a corporation.

Please see the Internal Revenue Code, corresponding Treasury Regulations, and other related published guidance for additional information on each penalty section.



## Review Feedback

Review feedback provides both the answers to each question and an explanation or feedback as to how we arrived at each answer at the end of the lesson. Review feedback also contains evaluative feedback explaining why incorrect answers are wrong. You are also provided the course topic from which we derived our answer and the external source material we used for verification.

If you are using the online version of the course, Ctrl+click on the topic to find the section from which we arrived at the answer for the question. You can also Ctrl+click on the question number to return to the specific review question.

### **Question 1 - D. The representative can be anyone who helped the taxpayer prepare the return**

If the taxpayer wants someone to represent him or her in his or her absence, he or she must furnish that person with proper written authorization. The taxpayer can use Form 2848 - Power of Attorney and Declaration of Representative or any other properly written authorization (Choice A). If the taxpayer wants to consult with an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, he or she should make arrangements with that person to be available for the interview (Choice B). Some examinations are handled entirely by mail. Examinations not handled by mail can take place in the taxpayer's home, his or her place of business, an Internal Revenue office, or the office of his or her authorized representative (Choice C). However, unenrolled return preparers may not represent taxpayers before appeals officers, revenue officers, counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury. Therefore, Choice D is false and the correct answer.

Topic - Practice Before the IRS

Source - Publication 947 - Practice Before the IRS

### **Question 2 - B. The individual was paid to prepare, assist in preparing, or review the tax return**

An individual who was paid to prepare, assist in preparing, or review a taxpayer's tax return must sign it and fill in the other blanks in the paid preparer's area of the return. Therefore, Choice B is the only correct answer.

However, a person shall not be a tax return preparer merely because such he or she:

- Furnishes typing, reproducing, or other mechanical assistance.
- Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed.
- Prepares as a fiduciary a return or claim for refund for any person.
- Prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

Topic - Rules for Tax Preparers – Circular 230

Source - Section 7701(a)(36)

### **Question 3 - A. A limited partner in a partnership may represent the partnership**

Upon presentation of satisfactory identification, an individual may appear on their own behalf before the IRS. Additionally, subject to the limitations, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service if he or she is a regular full-time employee of an individual employer may represent the employer (Choice B), he or she is a bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group (Choice C), or he or she is a regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate (Choice D). However, only a general partner or a regular full-time employee of a partnership may represent the partnership making Choice A incorrect.

Topic - Representing Oneself and Limited Practice

Source - Treasury Department Circular No. 230 - Subpart A - Section 10.7



**Question 4 - D. Completing mandatory tax law courses at an accredited university or college**

Section 10.35 previously titled Covered Opinions has been eliminated and a completely new section has been added. Tax practitioners will no longer need to follow a separate set of standards regarding covered opinions when providing written advice to their clients. The new Section 10.35 states a practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge (Choice A), skill, thoroughness and preparation necessary for the matter for which the practitioner is engaged (Choice B). A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area (Choice C) or studying the relevant law. Completing mandatory tax law courses at an accredited university or college (Choice D) is not included in Section 10.35.

Topic - Competence

Source - Circular 230 - Subpart B - Section 10.35

**Question 5 - B. The IRS representative signs a complaint naming the tax practitioner and files the complaint with the Administrative Law Judge (ALJ)**

The proceeding for a violation of Circular 230 regulations is instituted when the IRS representative signs a complaint naming the tax practitioner (attorney, CPA, registered tax return preparer, enrolled agent, or enrolled actuary) and files the complaint with the Administrative Law Judge (ALJ) (Choice B). Choices A, C and D do not correctly identify proceeding for violation of the regulations in Circular 230 instituted against a tax practitioner.

Topic - Institution of Proceeding

Source - Treasury Department Circular No. 230 - Section 10.63

**Question 6 - B. No special requirements apply to returns claiming Earned Income Tax Credit (EITC)**

A paid tax return preparer must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the EITC. The tax return preparer must complete the Due Diligence Questions for Returns Claiming EITC on *Form 8867 - Paid Preparer's Due Diligence Checklist*. Although lines 9a, 9b and 9c only ask three specific questions about EITC eligibility related to claiming a qualifying child, the tax preparer's client must meet all of the eligibility requirements for claiming the EITC. Therefore, the tax preparer's client cannot claim the EITC if all of the eligibility requirements for the EITC are not satisfied, even if the tax preparer answers "yes" to lines 9a, 9b and 9c.

To help ensure compliance with the law and that eligible taxpayers receive the right credit amount, the regulations require preparers, effective January 1, 2012, to file the Form 8867 with each return claiming the EITC. The regulations also reflect recent congressional action to increase the penalty for noncompliance with the due diligence requirement to \$545 in 2021. Further details can be found in Treasury Decision 9570, published in the Federal Register

Choice B is false because a tax practitioner must meet for due diligence requirements for all returns claiming the Earned Income Tax Credit (EITC).

Topic - Due Diligence Questions for Returns Claiming EITC

Source - Form 8867 - Paid Preparer's Due Diligence Checklist



# Glossary

---

**Accountant:** A practitioner of accounting or accountancy, which is the measurement, disclosure or provision of assurance about financial information that helps managers, investors, tax authorities and others make decisions about allocating resources.

**American Institute of Certified Public Accountants (AICPA):** The national professional organization of Certified Public Accountants (CPAs) in the United States.

**Attorney:** Any person who is a member in good standing of the bar of the highest court of any state, territory or possession of the United States, including a Commonwealth and the District of Columbia.

**Candidate:** An applicant for a CPA license.

**Certified Public Accountant:** The statutory title of qualified accountants in the United States who have passed the Uniform Certified Public Accountant Examination and have met additional state education and experience requirements for certification as a CPA. All CPAs are accountants, but not all accountants are CPAs.

**Circular 230:** A tax regulation detailing the requirements and responsibilities of those who prepare Federal tax returns for compensation.

**Client:** Any person or entity, other than an employer, that engages a practitioner or practitioner's firm to perform professional services.

**Commissioner:** The Commissioner of the Internal Revenue Service.

**Confidential client information:** Any information disclosed by the client that is not available to the public.

**Conflict of interest:** Representation of one client that is directly adverse to that of another client, or representing a client in circumstances creating a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client, or a third person or by a personal interest of the practitioner.

**Contingent fees:** The practice under which a professional bases his or her fee for services upon the results thereof. The American Institute of Certified Public Accountants has held that the performance of services for a contingent fee can be unethical; one exception is available, though, where (as in tax practice) the results are subject to third-party actions (here the government, in an audit setting). Several states are relaxing this restriction, allowing certified public accountants to mix the form of their compensation between fixed and contingent fees.

**Covered opinion:** A Covered Opinion is written advice (including electronic communications) by a tax practitioner concerning one or more Federal tax issues arising from: (1) an IRS listed tax-avoidance transaction, (2) any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, the principal purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code (IRC), or (3) any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, a significant purpose of which is the avoidance or evasion of tax imposed by the IRC if the written advice is (A) a reliance opinion, (B) a marketed opinion, (C) is subject to conditions of confidentiality, or (D) is subject to contractual protection.

**Due diligence:** The care a reasonable person should take in preparing or assisting in the preparation of, approving, and filing of tax returns, documents, and other papers relating to Internal Revenue Service matters. See Circular 230 Subpart B, Section 10.22.

**Durable power of attorney:** A power of attorney that is not subject to a time limit and that will continue in force after the incapacitation or incompetence of the grantor (the taxpayer).

**Enrolled agent:** Any individual who is enrolled under the provisions of Treasury Department Circular 230 to practice before the IRS.

**Federal tax matter:** Any matter concerning the application or interpretation of a revenue provision or law impacting a person's obligation to comply with the Federal tax law in addition to the obligation to file Federal tax returns and comply with any other law or regulation under the IRS administration.

**Frivolous Position:** A tax position that is knowingly advanced in bad faith and is patently improper.

**General power of attorney:** A power of attorney that authorizes the attorney-in-fact to perform any and all acts the taxpayer can perform.

**Government officer or employee:** An individual who is an officer or employee of the executive, legislative or judicial branch of a state or of the United States Government; an officer or employee of the District of Columbia; a Member of Congress.

**Limited power of attorney:** A power of attorney that limits the attorney-in-fact to certain specified act(s).

**Marketed opinion:** Tax advice that is intended to be used or referred to by someone other than the tax practitioner in promoting, marketing or recommending a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement, to one or more other taxpayers.

**More Likely Than Not standard:** The chances are better than 50% that one or more significant Federal tax issues will be resolved in the taxpayer's favor.

**National Association of State Boards of Accountancy (NASBA):** An association dedicated to serving the 55 state boards of accountancy.





**Practice before the Internal Revenue Service:** All matters connected with a presentation to the IRS or any of its offices or employees relating to a taxpayer's rights, privileges or liabilities under laws or regulations administered by the IRS. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the IRS, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

**Practitioner:** The term "Federally authorized tax practitioner" means any individual who is authorized under Federal law to practice before the Internal Revenue Service if such practice is subject to Federal regulation under Section 330 of title 31, United States Code. Generally, an attorney, CPA, enrolled agent, or enrolled actuary is authorized to practice before the IRS. Other individuals may qualify to practice temporarily or engage in limited practice before the IRS, however, they are not referred to as practitioners.

**Realistic possibility:** Formerly the standard by which a tax preparer conduct penalty was applied under IRC Section 6694 and the current standard for tax return positions under the AICPA's SSTS No. 1. Under SSTS No. 1, a practitioner should have a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged. In other words, the standard has a one-in-three possibility of success if challenged by the IRS.

**Reasonable basis:** Significantly higher than not frivolous and lower than realistic possibility of success.

**Recognized representative:** An individual who is recognized to practice before the IRS.

**Reliance opinion:** Tax advice that concludes at a confidence level of at least "more likely than not" that one or more significant Federal tax issues will be resolved in the taxpayer's favor.

**Sanctions:** Penalties or other means of enforcement used to provide incentives for obedience with the law, or with rules and regulations.

**Service:** The Internal Revenue Service

**Substantial authority standard:** Weight of authorities in support of a position is substantial in relation to the weight of authorities in opposition to the position (40%). In other words, substantial authority is more stringent than the one-in-three, realistic- possibility standard but less so than the more-likely-than-not standard.

**Suitability checks:** Criteria used when determining if an applicant possesses the properties that are necessary for tax practice. Suitability checks include verification on filing personal and/or business tax returns, payment of any tax liabilities and inquiry regarding any conduct which would justify suspension or disbarment from practice.

**Tax avoidance:** The process whereby an individual plans his or her finances so as to apply all exemptions and deductions provided by tax laws to reduce taxable income.

**Tax evasion:** The reduction of one's tax liability by illegal means.

**Tax return:** Reports filed with the IRS or with the state or local tax collection agency containing information used to calculate income tax or other taxes. Tax return also includes an amended tax return and a claim for refund.

**Unenrolled return preparer:** An unenrolled return preparer is an individual other than an attorney, CPA, enrolled agent, enrolled retirement plan agent, or enrolled actuary who prepares and signs a taxpayer's return as the preparer, or who prepares a return but is not required (by the instructions to the return or regulations) to sign the return.

**Written advice:** Tax advice in print (including electronic communications) by a tax practitioner concerning one or more Federal tax issues written simply and objectively.



# Bibliography

1. **IRS.** CPA Disbarred for Stealing from Daughter's Trust Fund. *irs.gov*. [Online] <http://www.irs.gov/uac/Newsroom/CPA-Disbarred-for-Stealing-from-Daughter%E2%80%99s-Trust-Fund>.
2. —. Enrolled Agent Disbarred for Stealing a Client's Tax Payments and Preparing Returns with False Deductions. *irs.gov*. [Online] <http://www.irs.gov/uac/Enrolled-Agent-Disbarred-for-Stealing-a-Client%E2%80%99s-Tax-Payments-and-Preparing>Returns-with-False-Deductions>.
3. —. Publication 947 - Practice Before the IRS and Power of Attorney. *irs.gov*. [Online] <http://www.irs.gov/publications/p947/>.
4. —. Internal Revenue Manual (IRM) - Part 1. Organization, Finance and Management - Chapter 25. Practice Before the Service - Section 1. Rules Governing Practice Before the IRS. *irs.gov*. [Online] [http://www.irs.gov/irm/part1/irm\\_01-025-001.html](http://www.irs.gov/irm/part1/irm_01-025-001.html).
5. **SEC.** Sarbanes-Oxley Act. *sec.gov*. [Online] <https://www.sec.gov/about/laws.shtml#sox2002>.
6. **IRS.** Treasury Department Circular 230. *irs.gov*. [Online] <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.
7. **U.S. Government Printing Office.** Title 26 - INTERNAL REVENUE CODE - Subtitle F - Procedure and Administration - CHAPTER 79 - DEFINITIONS. *gpo.gov*. [Online] <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/html/USCODE-2011-title26-subtitleF-chap79-sec7701.htm>.
8. **IRS.** The Office of Professional Responsibility (OPR) at a Glance. *irs.gov*. [Online] [http://www.irs.gov/Tax-Professionals/Enrolled-Agents/The-Office-of-Professional-Responsibility-\(OPR\)-At-a-Glance-1](http://www.irs.gov/Tax-Professionals/Enrolled-Agents/The-Office-of-Professional-Responsibility-(OPR)-At-a-Glance-1).
9. **AICPA.** Become a CPA. *aicpa.org*. [Online] <http://www.aicpa.org/becomeacpa/pages/becomeacpa.aspx>.
10. —. AICPA Membership CPE Requirements. *aicpa.org*. [Online] <http://www.aicpa.org/Membership/Requirements/Pages/membership-CPE-requirements.aspx>.
11. **IRS.** FAQs: Enrolled Agent Continuing Education Requirements. *irs.gov*. [Online] <http://www.irs.gov/Tax-Professionals/FAQs:-Enrolled-Agent-Continuing-Education-Requirements>.
12. —. Overview of Circular 230 Disciplinary Proceedings. *irs.gov*. [Online] <http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Overview-of-Circular-230-Disciplinary-Proceedings>.
13. —. Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases. *irs.gov*. [Online] <http://www.irs.gov/pub/irs-utl/rightsandresponsibilitiesofpractitioners.pdf>.
14. —. Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service. *irs.gov*. [Online] [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).
15. —. Final Agency Decisions in Disciplinary Cases. *irs.gov*. [Online] <http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Final-Agency-Decisions-in-Disciplinary-Cases>.
16. —. Avoiding Penalties and the Tax Gap. *irs.gov*. [Online] <http://www.irs.gov/uac/Avoiding-Penalties-and-the-Tax-Gap>.
17. **Cornell University Law School.** 26 USC § 6060 - Information returns of tax return preparers. *law.cornell.edu*. [Online] <http://www.law.cornell.edu/uscode/text/26/6060>.
18. **IRS.** Instructions for Form 8867 - Paid Preparer's Due Diligence Checklist. *irs.gov*. [Online] <https://www.irs.gov/pub/irs-pdf/i8867.pdf>.
19. —. Consequences of Filing EITC Returns Incorrectly. *eitc.irs.gov*. [Online] <http://www.eitc.irs.gov/rptoolkit/dd/consequences/>.
20. —. Due Diligence FAQs. *eitc.irs.gov*. [Online] <http://www.eitc.irs.gov/rptoolkit/faqs/duediligence/>.
21. —. Summary of Preparer Penalties under Title 26. *irs.gov*. [Online] <http://www.irs.gov/Tax-Professionals/Summary-of-Preparer-Penalties-under-Title-26>.



# Index

## A

Accuracy ..... 1-20  
 Negligence..... 1-33  
 Substantial Understatement ..... 1-33  
 Administrative Law Judge..... 1-27, 1-28, 1-29, 1-31  
 Advertisements ..... 1-22  
 Advisory Committees ..... 1-25  
 American Institute of Certified Public Accountants (AICPA)..... 1-13  
 Annual Federal Tax Refresher (AFTR) ..... 1-14, 1-15, 1-16  
 Annual Filing Season Program (AFSP)..... 1-14, 1-15  
 Answer..... 1-29  
 Appeal  
 Administrative Decision ..... 1-31  
 Appellate Authority ..... 1-31  
 Application ..... 1-10  
 Assistance to Other Practitioners ..... 1-21  
 Attorneys..... 1-2, 1-10  
 Auditing and Attestation (AUD)..... 1-12

## B

Best Practices ..... 1-22  
 Breach of Trust ..... 1-26  
 Business Environment and Concepts (BEC) ..... 1-12

## C

Censure ..... 1-29  
 Certified Public Accountants (CPA)..... 1-2, 1-12  
 Changes of Address ..... 1-11  
 Circular 230 ..... 1-8  
 Subpart A..... 1-10  
 Subpart B..... 1-19  
 Subpart C..... 1-26  
 Subpart D ..... 1-28  
 Subpart E..... 1-32  
 Client Omissions ..... 1-20  
 Client Records..... 1-22  
 Competence ..... 1-23  
 Complaint ..... 1-28  
 Compliance..... 1-25  
 Confidentiality Privileges ..... 1-7  
 Conflict of Interest..... 1-22  
 Contingent Fees..... 1-21  
 Continuing Professional Education..... 1-12, 1-13, 1-14  
 Failure to Complete..... 1-17  
 Instructors ..... 1-16  
 Measurement..... 1-16  
 Recordkeeping ..... 1-17  
 Records ..... 1-13  
 Requirements..... 1-12, 1-13  
 Rules..... 1-14  
 Self-study Programs ..... 1-14  
 Waiver ..... 1-16  
 Continuing Professional Education Providers..... 1-14, 1-17

Conviction..... 1-26  
 Covered Opinions  
 Written Advice ..... 1-23

## D

Disbarment ..... 1-26, 1-29, 1-30  
 Disciplinary Hearings ..... 1-28  
 Answer ..... 1-29  
 Complaint ..... 1-28  
 Decision ..... 1-29  
 Evidentiary Hearing ..... 1-29  
 Disciplinary Proceedings ..... 1-26  
 Disclosure or Use of Information ..... 1-39  
 Disqualification ..... 1-28  
 Disreputable Conduct ..... 1-4, 1-26  
 Document Retention ..... 1-36  
 Due Diligence..... 1-20

## E

e-Commerce Communications ..... 1-22  
 Eligibility ..... 1-10  
 Enrolled Actuaries..... 1-3  
 Enrolled Agents..... 1-3, 1-10  
 Enrolled Retirement Plan Agents..... 1-3  
 Expedited Suspension..... 1-32

## F

Failure to File Correct Information ..... 1-38  
 Failure to Furnish Copy to Taxpayer ..... 1-38  
 Failure to Furnish Identifying Number ..... 1-38  
 Failure to Retain Copy or List..... 1-38  
 Failure to Sign Return ..... 1-38  
 Federal Tax Matter ..... 1-24  
 Federally Authorized Tax Practitioner ..... 1-7  
 Fees  
 Contingent Fees..... 1-21  
 Practitioner..... 1-21  
 Financial Accounting and Reporting (FAR)..... 1-12  
 Fixing America’s Surface Transportation (FAST) Act ..... 1-34  
 Former Government Employees..... 1-21  
 Former IRS Employees ..... 1-21  
 Forms  
 Form 14392 - Continuing Education Waiver Request ..... 1-14  
 Form 23 - Application for Enrollment to Practice Before the Internal Revenue Service ..... 1-5, 1-11  
 Form 23-EP - Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent ..... 1-5  
 Form 2587- Application for Special Enrollment Examination. 1-5  
 Form 2848 - Power of Attorney and Declaration of Representative ..... 1-2, 1-6, 1-30  
 Form 5434 - Application for Enrollment..... 1-5  
 Form 56 - Notice Concerning Fiduciary Relationship ..... 1-31



Form 8275 - Disclosure Statement..... 1-33  
 Form 8554 - Application for Renewal of Enrollment to Practice  
 Before the Internal Revenue Service ..... 1-6, 1-11  
 Form 8554-EP - Application for Renewal of Enrollment to  
 Practice Before the Internal Revenue Service as an  
 Enrolled Retirement Plan Agent (ERPA)..... 1-6  
 Form 8821 - Tax Information Authorization..... 1-3, 1-6, 1-31  
 Form 8862 - Information to Claim Earned Income Tax Credit  
 after Disallowance ..... 1-37  
 Form 8867 - Paid Preparer’s Due Diligence Checklist ..... 1-35  
 Form W-12 - IRS Paid Preparer Tax Identification Number  
 Application and Renewal ..... 1-19  
 Fraudulent Return  
 Guilty of a Felony ..... 1-39  
 Guilty of a Misdemeanor..... 1-39  
 Frivolous Return ..... 1-34  
 Frivolous Tax Position..... 1-23

**G**

General Provisions..... 1-32

**H**

Hearing..... 1-29

**I**

Incompetence..... 1-26  
 Individual Income Tax Penalties  
 Accuracy ..... 1-32  
 Civil Fraud..... 1-33  
 Failure to File..... 1-33  
 Failure to Pay ..... 1-33  
 Frivolous Tax Return ..... 1-34  
 Information Furnished to the IRS ..... 1-19  
 Institution of Proceeding ..... 1-27  
 Internal Revenue Code (IRC) ..... 1-1

**K**

Knowing or Reckless Disclosure..... 1-39

**L**

Legal Analysis Branch ..... 1-8  
 Limited Practice..... 1-6, 1-18  
 Listed Transactions ..... 1-38

**M**

Marketed Opinions..... 1-25  
 Misconduct..... 1-8, 1-28

**N**

Negotiation of Taxpayer Checks..... 1-22, 1-38  
 Notary Public ..... 1-21

**O**

Office of Professional Responsibility ..... 1-1, 1-8, 1-28  
 Operations Management Branch ..... 1-8

**P**

Paid Preparer’s Due Diligence Checklist ..... 1-35  
 Passports ..... 1-34  
 Penalties  
 Accuracy..... 1-33  
 Petition For Reinstatement ..... 1-31  
 Power of Attorney ..... 1-6  
 Practice Before the Department..... 1-7  
 Practice Before the IRS ..... 1-2  
 Practice of Law ..... 1-22  
 Practitioner ..... 1-26  
 Preparer Tax Identification Number (PTIN) ..... 1-11, 1-19  
 Prompt Disposition ..... 1-21  
 Protecting Americans from Tax Hikes Act of 2015 (PATH) ..... 1-38  
 Public Company Accounting Oversight Board (PCAOB) ..... 1-8  
 Publications  
 Publication 216 - Conference and Practice Requirements . 1-30

**R**

Reasonable Cause..... 1-26  
 Receipt of Information..... 1-27  
 Record of Completion..... 1-15  
 Records  
 Public Inspection ..... 1-32  
 Regulation (REG)..... 1-12  
 Relationship to the Taxpayer..... 1-6  
 Reliance Opinions ..... 1-24  
 Renewal ..... 1-11  
 Representing Oneself ..... 1-18  
 Restrictions ..... 1-4  
 Return of Client’s Records ..... 1-22  
 Return Preparer Office (RPO) ..... 1-1, 1-5  
 Revenue Rulings ..... 1-1  
 Rules for Tax Preparers..... 1-8

**S**

Sanctionable Acts ..... 1-34  
 Sanctions for Violation of the Regulations ..... 1-26  
 Sarbanes-Oxley Act of 2002..... 1-8  
 Saving Provision..... 1-32  
 Secretary of the Treasury ..... 1-7, 1-26, 1-31  
 Solicitation ..... 1-22  
 Special Enrollment Examination (SEE) ..... 1-10  
 Statement on Standards for Continuing Professional Education  
 (CPE) Programs..... 1-13  
 Suitability Checks..... 1-10  
 Suspension..... 1-29, 1-30

**T**

Tax Return Preparer Penalties ..... 1-34  
 Aiding or Abetting ..... 1-39



Failure to File Correct Information ..... 1-38  
Failure to Follow Procedures..... 1-38  
False or Fraudulent Return..... 1-39  
Knowing or Reckless Disclosure ..... 1-39  
Negotiation of Taxpayer Checks..... 1-38  
Promoting Abusive Tax Shelters..... 1-38  
Unauthorized Disclosure or Use of Information ..... 1-39  
Understatement of Taxpayer’s Liability ..... 1-38  
Tax Returns and Documents Standards..... 1-23  
Term and Renewal..... 1-11  
Treasury Regulations ..... 1-1

**U**

U.S. Federal District Court ..... 1-31

Unauthorized Disclosure ..... 1-39  
Understatement of Taxpayer’s Liability  
    Due to Unreasonable Position..... 1-38  
    Due to Willful or Reckless Conduct ..... 1-38  
Unenrolled Return Preparers ..... 1-3  
Uniform Certified Public Accountant Examination ..... 1-12

**W**

Willfully Sign ..... 1-23  
Written Advice..... 1-23



## Examination Instructions - 2 Hour Ethics

Earning your CPE credits from a self-study course is contingent upon scoring 70% or higher on the exam questions related to the course material. This examination covering preparer ethics consists of 10 multiple-choice questions, meaning you must correctly answer 7 in order to pass.


The exam has no time limit, and is open book, so you are allowed to look up answers in the text we provide. You do not need to finish the exam in one continuous sitting as all of the answers you enter online are automatically saved. Please keep in mind, it is necessary to click the "Next" button after changing an incorrect or unanswered question to save the new response. After you submit the online exam to us you will receive a pass/fail message.

If you should fail the exam on your first attempt, you will have the option to re-take the exam at no additional cost. If you score less than 70%, a message will be displayed at the bottom of the page along with a list of incorrect questions. You have unlimited attempts to pass an exam.

Upon successful completion, we will e-mail you a Certificate of Completion and notify the IRS and (if applicable) CTEC that you earned CPE credits from Golden State Tax Training Institute, Inc.

We wish you every success and thank you for choosing Golden State Tax Training Institute, Inc.

### Submit your exam:

	<p><i>How To:</i></p> <ul style="list-style-type: none"><li>• Log into <a href="http://www.GSTTI.com">www.GSTTI.com</a>.</li><li>• Enter your email address and your password.</li><li>• Click link to take online exam.</li><li>• Answer questions.</li><li>• Submit answers and completed survey.</li><li>• Verify PTIN*.</li><li>• Get certificate by email within 24 hours.</li><li>• We electronically notify the IRS and/or CTEC that you earned CPE course credits.</li></ul>
--	--

**\* Important: Your PTIN and name must match EXACTLY what is in the IRS system.**



## Examination Questions - 2 Hour Ethics

1. Identify the individual below who is not eligible to practice before the IRS. None of the individuals are under suspension or disbarment.
  - A. Attorney
  - B. Certified public accountant
  - C. Certified financial planner
  - D. Enrolled actuary, with respect to specified statutory issues
2. After notice and opportunity for a proceeding, the Secretary may reprimand, suspend, or disbar from practice before the Department a representative who commits any of the following actions except:
  - A. Represents him or herself before the IRS
  - B. Is disreputable
  - C. Violates regulations prescribed under this section
  - D. With intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented
3. Which of the following types of tax practitioner discipline is not included in Circular 230?
  - A. Censure
  - B. Refund offset
  - C. Suspension of practice privileges
  - D. Disbarment
4. Annual Filing Season Program (AFSP) participants have limited representation rights, meaning they can represent clients whose returns they prepared and signed before which of the following entities?
  - A. Revenue agents
  - B. IRS customer service representatives
  - C. The Taxpayer Advocate Service
  - D. All of the above
5. Amanda Jones is a tax practitioner who is representing Sean and Diane Smith before the Wage and Investment Division of the Internal Revenue Service. The IRS is questioning Sean and Diane on contributions that were listed on their 2020 Form 1040. While reviewing the documentation provided by Sean and Diane, Amanda discovers contributions that were made to a non-qualified organization. What is the appropriate action for Amanda to take?
  - A. Amanda must advise Sean and Diane on how to keep the inaccuracy from being discovered by the IRS
  - B. Amanda must advise Sean and Diane promptly of the inaccuracy and the consequences provided by the Internal Revenue Code and Regulations
  - C. Amanda must notify the Internal Revenue Service that she is no longer representing Sean and Diane by withdrawing her Form 2848
  - D. Amanda must immediately advise the Internal Revenue Service examiner of the non-qualified contributions
6. Which of the following statements is correct with respect to a client's request for records of the client that are necessary for the client to comply with his or her Federal tax obligations?
  - A. The practitioner may never return records of the client to the client even if the client requests prompt return of the records
  - B. The existence of a dispute over fees always relieves the practitioner of his or her responsibility to return records of the client to the client
  - C. The practitioner must, at the request of the client, promptly return the records of the client to the client unless applicable state law provides otherwise
  - D. The practitioner must, at the request of the client, return the records of the client to the client within three months of receiving the request



7. Under Section 10.51 of Circular 230, which of the following is not considered an example of disreputable conduct for which a tax practitioner can be censured or suspended?
  - A. Directly or indirectly attempting to influence the official action of any employee of the Internal Revenue Service by use of threats, false accusations, or by bestowing any gift, favor or thing of value
  - B. Misappropriation or failure to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States
  - C. Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension or disbarment
  - D. Failure to timely pay personal income taxes
  
8. Jack Smith was suspended from practice for 4 months by the IRS. Which of the following is he permitted to do during the period of suspension?
  - A. Appear as a witness before the IRS
  - B. Sign closing agreements regarding tax liabilities
  - C. State or imply that he is eligible to practice before the IRS
  - D. Represent a client at conferences, hearings, and meetings
  
9. Both the Office of Professional Responsibility and the practitioner have the right to appeal the Initial Decision and Order of the Administrative Law Judge (ALJ) to the Department of the Treasury within how many days of being served?
  - A. 10 days
  - B. 20 days
  - C. 30 days
  - D. 60 days
  
10. Under the Tax Cuts and Jobs Act (TCJA), the due diligence requirement now also applies to individual income tax returns claiming which of the following tax benefits?
  - A. Lifetime Learning Credit
  - B. Head of Household filing status
  - C. Coverdell Education Savings Account
  - D. Health Savings Account (HSA)





# GOLDEN STATE TAX TRAINING INSTITUTE, INC.

IRS Provider Number: P619F  
CTEC Provider Number: 2040

## 2 Hour Ethics Continuing Professional Education Course Evaluation

IRS Course Number: P619F-E-00062-21-S  
CTEC Course Number: 2040-CE-0004

**Instructions:** Please comment on all of the following evaluation points for this course and select a number grade, using the 1-5 scale, with 5 being the highest.

- Were the stated learning objectives met?..... 5 4 3 2 1
- Were the course materials accurate and relevant, and did they contribute to the achievement of the learning objectives?..... 5 4 3 2 1
- Was the time allocated to learning adequate?..... 5 4 3 2 1
- Were the facilities/equipment appropriate (if applicable)?..... 5 4 3 2 1
- Was the course syllabus or handout materials satisfactory?..... 5 4 3 2 1
- Were the audio and visual materials effective (if applicable)?..... 5 4 3 2 1
- If applicable, were individual instructors knowledgeable and effective?
- Instructor (enter name) ..... 5 4 3 2 1
- Instructor (enter name) ..... 5 4 3 2 1

Number of Hours/Minutes it took you to study and complete course.

Additional comments:  
\_\_\_\_\_  
\_\_\_\_\_

Part of the course you found *most* beneficial:  
\_\_\_\_\_  
\_\_\_\_\_

Part of the course you found *least* beneficial:  
\_\_\_\_\_  
\_\_\_\_\_

Would you like us to contact you about your comments after the course?  YES  NO

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Please complete and include with exam at the conclusion of the course.**